

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

RAYMUNDO’S FOOD GROUP LLC,)	
)	
Employer,)	CASE NO. 13-RC-244834
)	
AND)	
)	
LOCAL 881 UNITED FOOD AND)	
COMMERCIAL WORKERS,)	
)	
Petitioner.)	

**PETITIONER’S STATEMENT IN OPPOSITION TO THE EMPLOYER’S REQUEST
FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION AND CERTIFICATION
OF REPRESENTATIVE**

Petitioner, Local 881 United Food and Commercial Workers (“Union” or “Local 881”), and pursuant to Section 102.67(f) of the National Labor Relations Board’s (“Board”) Rules and Regulations, submits its Statement in Opposition to the Employer, Raymundo’s Food Group’s (“Employer” or “Raymundos”), Request for Review (“RFR”) of the Regional Director’s January 30, 2020, Decision and Certification of Representative (“RD Decision”).

INTRODUCTION

On or about July 15, 2019, Petitioner filed the Petition in the above captioned matter, and the representation election was held on August 2, 2019. Thereafter, the Regional Director ordered a second election to be held on November 6, 2019. The Union won the election by a vote of 66 votes in favor, 45 votes against. On November 13, 2019, the Employer filed three objections alleging the Union engaged in objectionable conduct. (Exhibit A). The Hearing was held on December 2, 2019.¹ (Exhibit B). During the hearing, the Employer withdrew its third objection.

The Employer’s two remaining objections were:

¹ Transcript of the Hearing Objections (Volume 2) is attached as Exhibit C, and referred through this brief as “Tr.”.

1. Threatening employees by telling them that they could be physically harmed if they vote for the Employer.
2. Threatening employees by telling them they would be arrested by the Police if they supported the Employer.

On December 18, 2019, the Hearing Officer issued his Hearing Officer's Report (the "Report") overruling the Employer's objections. (Exhibit D). On January 2, 2020, Raymundos filed exceptions to the Hearing Officer's report. On January 30, 2020, the Regional Director issued its decision sustaining the Hearing Officer's Report and certifying the Union as the collective bargaining representative of the petitioned for unit. (Exhibit E). Thereafter, on February 13, 2020, the Employer filed its RFR of the RD Decision. (Exhibit F, excluding document attachments).

ARGUMENT

1. The Regional Director Correctly Decided that the Union Did Not Threaten Maria Zorrilla.

a. Factual Background.

Maria Zorrilla ("Zorrilla") testified that around 5:00 a.m. on November 4, 2019, two large fat men knocked on her car window after she parked in the Employer's parking-lot before beginning her shift. (Tr. 213:1-214:2). The men gave Zorrilla a piece of paper and when she told them she did not need the Union, one of the men insulted her and threw a piece of paper.² (Tr. 218:19-25). When Zorrilla walked away the men "stayed behind" and talked amongst themselves as she walked the rest of the way to the front door. (Tr. 219:3-17). Zorrilla admitted that the men "never threatened to hurt [her]" (Tr. 218: 5-11), never made an intimidating gesture towards her (Tr. 219:19-22), never touched her (Tr. 218: 2-4), and that when she walked towards the front door the men stayed about 10-15 feet away from her (Tr. 223:20-224:1). Zorrilla testified that she was intimidated because the men were tall and fat compared to her who is "little." (Tr. 218:15-18).

² One of the men told her "you continue earning \$11 an hour, and you're going to die from hunger." (Tr. 213:2-15).

b. Legal Analysis.

It is well established that, “union adherents are entitled to handbill and to urge employees to vote for the Union as long as it is done peacefully and without threats.” *Firestone Textiles Co.*, 244 NLRB 168, 171 (1979); see also *Pruitthealth-Virginia Park, LLC v. NLRB*, 888 F.3d 1285, 1293 (D.C. Cir, 2018) (citing *Chrill Care Inc.*, 340 NLRB 1016 (2016)) (“unions are permitted to hold demonstrations outside employers’ premises and engage with employees on their way to work to peacefully encourage them to support the union and distribute union literature.”). Additionally, the Board has held that even if union agents momentarily hinder employees’ access to a building while handbilling or picketing, a union does not engage in objectionable conduct if it does not engage in “forceful” or “threatening” conduct. *Chrill*, 340 NLRB at 1016; see also *Comcast Cablevision of New Haven, Inc.*, 325 NLRB 833, & n. 3 (1998). Finally, while a union agent’s derogatory or insulting comments to employees may be “regrettable,” if the agent does not prohibit employees’ from entering or exiting the building there is no objectionable conduct. *Firestone Textiles*, 244 NLRB at 170-71.

The men did not threaten to physically harm Zorrilla. First, Zorrilla testified that the men did not physically touch her, make intimidating gestures, and most importantly, she testified that the men “never threatened to hurt me.” At most, the men momentarily delayed Zorrilla’s access to the building when they handed her a piece of paper, which is permissible conduct. *Chrill*, 340 NLRB at 1016.³ Second, while the men’s comments to Zorrilla may have been regrettable, again, in the absence of threatening conduct, they did not engage in objectionable conduct.

³ The Employer’s argument that one of the men threw the piece of paper at Zorrilla is unsupported by the record. Zorrilla testified that Zorrilla testified that the man who held the flyers, “threw the paper” and then followed her (Tr. 219:3-19, 220). Nowhere in the record does Zorrilla state that the man threw the paper at her.

Third, Zorrilla's subjective fears are not relevant. A party's conduct is evaluated from the perspective of the reasonable employee. *Chrill*, 340 NLRB at 1016 (the union's actions when handbilling is evaluated from the perspective of a reasonable employee). In this respect, the Employer argues that the actual conduct of the men does not matter because Zorrilla *felt* scared. (RFR pgs. 5-6). However, it is well established that the subjective feelings of employees does not determine whether a party engaged in objectionable conduct. *Picoma Industries*, 296 NLRB 498 (1989), citing *Emerson Electric Co.*, 247 NLRB 1365, 1370 (1980) ("the subjective reactions of employees to alleged threats are irrelevant to the question of whether there was in fact objectionable conduct, rather the test is based on an objective standard."). And in this case – while Zorrilla testified she felt scared – her testimony unambiguously describes men who did not threaten to physically harm her.

Further, Zorrilla testified that she was intimidated and felt fear because she is small and the men were tall and fat. Simply put, Zorrilla's fears regarding the men were unreasonable. A reasonable employee would not be intimidated based on the weight and height of the men, especially when they did not threaten her or block her access to the building. To hold otherwise would create an absurd result where overweight union organizers or management could not engage with short employees without potentially committing objectionable offenses. Moreover, the Employer's argument that the Board should consider the fact it was dark when the men approached Zorrilla is equally absurd. The Employer's morning shift began before the sun had risen, and considering the fact that it was still dark would create another unreasonable result where union organizers would place the outcome of elections at greater risk when attempting to handbill before early-morning shifts.

Finally, the man's comment regarding "die from hunger" was not a threat of physical harm. The man first referenced Raymundos employees' low wages, and the comment was clearly meant to highlight that Raymundos's workers are underpaid. *Stainless Steel Products, Inc.*, 157 NLRB 232, 256 (1966) ("Verbal utterances cannot be starved of their meaning and stripped of their reasonably calculated effect by being placed in isolation. They are, like other utterances and conduct to which they relate, meaningful only in the context from which they arise"). Moreover, when the Board has found statements regarding starving to be objectionable, it has always been in the context of a threat of a strike or job loss which is not present in this case.⁴ See *Montgomery Ward & Co.*, 232 NLRB 848, 848 (1977) (employer's threat of job loss and starvation violated Act); *Answering, Inc.*, 215 NLRB 688, 689 (1974) (threat of starvation as a result of strike violated Act).

c. The Regional Director Correctly Applied the Third-Party Standard.

The Board has long held that in determining whether a person acts as an agent of another, the Board applies the common-law principles of agency. *Dr. Rico Perez Products*, 353 NLRB 453, 463 (2008); *NLRB v. Longshoremen (ILWU) Local 10 (Pacific Maritime Assn.)*, 283 F.2d 558, 563 (9th Cir. 1960), enfd. as modified 123 NLRB 559 (1959). Under the common-law rules of agency, an agency relationship can be established by vesting an agent with actual or apparent authority. See *Cornell Forge Co.*, 339 NLRB 733 (2003) (an individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party). Actual authority is "created by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses

⁴ The Employer relies on *The Rupp Forge Co.*, to argue that statements akin to employees dying from hunger do not need to be accompanied by a threat of job loss to be objectionable. 202 NLRB 393 (1973) (employer told employee that if union was brought into plant a group of employees would "starve to death"). However, *Rupp Forge* only supports the Union's position. In *Rupp Forge*, the threat regarding "starve to death" was made in the context of the Employer retaliating against employees by cutting-hours and hiring subcontractors in response to the employees' union activity. As such, the threat of starving to death was tied to a threat of job-loss and loss of hours and wages, and was not campaign rhetoric referencing the employees' low wages.

the principal's assent that the agent takes action on the principal's behalf." Restatement (Third) Of Agency, Section 3.01. "Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Restatement (Third) of Agency, Section 2.03.; See *Communication Workers Local 9431 (Pacific Bell)*, 304 NLRB 446, 446 fn. 4 (1991) (the Board has held that under the concept of apparent authority, "an individual will be held responsible for actions of his agent when he knows of 'should know' that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him."). Most significantly, the burden of proving any type of agency "rests with the party asserting that relationship." *Millard Processing Services*, 304 NLRB 770, 771 (1991), enfd. 2 F.3d 258 (8th Cir. 1993), cert. denied 510 U.S. 1092 (1994); See *Pan-Oston Co.*, 336 NLRB 305, 306 (2001); see also *Sunset Line & Twine Co.*, 79 NLRB 1487, 1508 (1948).

In its RFR, the Employer makes several untethered attempts to establish an agency relationship between the men in the parking-lot and the Union. The Employer argues that because Eduardo Victoria ("Victoria"), a union organizer, and Moises Zavala ("Zavala"), a union organizer, were handbilling on November 4, around 2:30 p.m. on 73rd Street and Lockwood Street – about a block away from the Employer's plant – that the men Zorrilla spoke to at 5:00 a.m. must be agents of the Union. (RFR pgs 7-8). In other words, the Employer argues that if two groups of people speak to employees on the same day at different times, that there must be an agency relationship. However, there is no direct or implied evidence that the men in the parking-lot at 5:00 a.m. were from the Union, and the fact Zavala and Victoria were handbilling in the afternoon on

the same day does not establish an agency relationship.⁵ *Millard Processing Services*, 304 NLRB at 771.

Failing to tie the men to the Union, the Employer argues that the men were agents of Arise Chicago, and that Arise is an agent of the Union. (RFR pgs 7-8). This argument fails for several reasons. First, the mere fact Arise was also on the premise on November 4 does not mean that the men were agents of Arise. Second, assuming *arguendo* that the men were agents of Arise, there still is no agency relationship established because Arise and Local 881 are separate organizations. (Tr. 236:8-13). In this regard, the Employer argues that the record is vague as to whether Arise and Local 881 are separate organizations. However, any ambiguity as to the relationship between Local 881 and Arise ultimately defeats the Employer's agency argument because it is the Employer's burden to affirmatively establish an agency relationship between Arise and Local 881.

Finally, the Employer argues that because Victoria and Zavala asked the Arise members what they were doing on Raymundos' property, that the men must be agents of the Union. (RFR p. #). In the midst of an organizing campaign, the Union unquestionably has an interest as to what flyers are being distributed to employees – whether they are distributed by the Union, the Employer or a third-party. Moreover, there is no Board law that supports the Employer's argument that the Union asking a third-party a question establishes an agency relationship.

In the end, the Employer has already conceded that the men did not have direct authority to act on behalf of Local 881 when it stated in its brief that: “[n]either of the Union's witnesses had personal knowledge of what occurred with respect to handing out flyers on the morning of November 4th.” (RFR p. 7). Additionally, there is no evidence of apparent authority, as the mere fact the men were passing out pro-union flyers is insufficient to establish apparent authority. *S.*

⁵ Moreover, Zavala and Victoria were present for the hearing, and if these men were the men Zorrilla spoke to on November 4 she could have identified them on the record.

Lichtenberg & Co., Inc., 296 NLRB 1302 (1989) (pro-union employees are not considered union agents based on pro-union activity alone). As the Hearing Officer correctly found, the men could have been Raymundos employees, Local 881 employees, agents of Arise, or even agents of the Employer. However, it was the Company's burden to establish the agency relationship, and it fell woefully short of meeting that burden. Accordingly, because the Employer failed to establish an agency relationship between the men and the Union, the Regional Director correctly decided to apply the third-party standard.

2. The Regional Director Correctly Decided that the Union Did Not Threaten Virginia Rivera.

a. Factual Background.

The Employer's second objection regarding Virginia Rivera ("Rivera"), a Raymundos employee, is based entirely on a November 3, 2019 text conversation between Rivera and Victoria. The record established that:

- (1) Victoria sent Rivera a pro-union campaign message;
- (2) Rivera responded by calling Victoria a "mamone" and a liar and told him to stop sending her "fucking" messages;
- (3) Victoria chastised Rivera for insulting him and using foul language and told her that he would report her to the Union's legal department;
- (4) Victoria told Rivera that he would stop sending her texts and if she changed her mind, he would be willing to speak with her and reach a "better understanding";
- (5) Rivera responded by complaining about the texts the Union sent her; and,
- (6) Victoria told Rivera that if she continued to text him he will be forced to file a complaint with the police.

(Tr. 165-170, Er. Ex. 1). Victoria testified that Rivera cursed at him and was rude to him, which prompted his text about contacting the police *if* Rivera contacted him again. (Tr. 252:10-253:6).

Rivera admitted that the first time Victoria ever mentioned the police was in his November 3 text to her (Tr. 174:17-21). Rivera further admitted that she told nine other employees and the Employer's general manager about the conversation. (Tr. 172:4-23). Finally, Rivera admitted that she told the other employees that she: (1) first cursed at Victoria in the text conversation (Tr. 175:17-23); (2) told employees that the Union was going to call the police on her because she cursed at the Union (Tr. 180:18-22); and, (3) told employees that the Victoria would only call the police if she contacted him again (Tr. 187:5-13).

b. Victoria's Text to Rivera Was Not Objectionable Conduct.

The Regional Director correctly decided that Victoria's reference to the police did not constitute objectionable conduct under *Taylor Wharton Division Harsco Corp.*, 336 NLRB 157 (2001). Under *Taylor Wharton*, in determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice, the Board considers: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. *Id.* When reviewing the *Taylor Wharton* factors on balance, Victoria's text to Rivera did not disrupt laboratory conditions:

(1) The number of incidents:

Victoria's text referring to the police is the only incident of potential misconduct supported by reliable evidence.

(2) The severity of the incident and whether it was likely to cause fear among employees in the voting unit:

No reasonable employee could interpret Victoria's statement as a threat in response to anti-union activity. First, Victoria's text regarding the police cannot be considered in isolation. *Stainless Steel*, 157 NLRB at 256. After Victoria sent a meme to Rivera, she cursed at him and insulted him. (Er. Ex. 1, pgs. 7-8). Victoria responded politely when disputing Rivera's insults, but even then, Rivera responded rudely again. (*Id.*). It was only after Rivera engaged in insulting behavior that Victoria referred to the police, and even then, he told her he would call the police *only if* she texted him again. (*Id.* pgs. 9-10). The record evidence clearly establishes that the conversation between Rivera and Victoria was not related Rivera's support of the Company. Indeed, even Rivera testified that the Union threatened to call the police on her because she cursed at him, not because she supported the Company. (Tr. 180:18-22). Accordingly, a reasonable employee would interpret Victoria's reference to the police as an isolated incident in response to Rivera's insulting and demeaning language, and not cause fear among the employees in the voting unit.

(3) The number of employees in the voting unit who were subjected to the misconduct:

See response to *Taylor Wharton* factor No. 6 below.

(4) The proximity of the misconduct to the date of the election:

Victoria's text to Rivera occurred during the critical time-period before the second election.

(5) The degree to which the misconduct persists in the minds of employees in the voting unit:

The Employer failed to adduce any non-hearsay evidence regarding how other employees interpreted Rivera's text conversation with Victoria.

(6) The extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit:

Victoria's text was isolated and not widely disseminated. First, the text was sent to a single employee out of the presence of other employees. See *Extruded Metals, Inc.*, 328 NLRB 82, 84 (1999) (isolated statement known by few employees was insufficient to sustain objection). Second, the text was not widely disseminated, as Rivera testified she told only 9 employees and the Employer's plant manager, out 135 petitioned for employees. *Q.B. Builders*, 312 NLRB 1141 (1993) (overturning election where threats to call the INS on employees who did not vote in favor of the union were disseminated to at least one-third of bargaining unit, and one-third of bargaining unit); *Avis-Rent-A-Car System*, 280 NLRB 580, 582 (1986) (objectionable conduct not widely disseminated amongst bargaining unit employees). Accordingly, Victoria's isolated comment to a single employee weighs against finding objectionable conduct. See *M.B. Consultants, Ltd.*, 328 NLRB 1089 (1999) (insufficient evidence that employer's promise of benefits could have affected election, where promise was made to two employees, there was no evidence it was disseminated to others, and union lost election by six votes).

(7) The effect, if any, of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection:

The Union did not take any steps to alleviate or rectify Victoria's text regarding the police.

(8) The closeness of the vote:

The Union won election by 21 votes, and the handful of employees Victoria told about the conversation would not have affected the outcome of the election. As such, because the Union won

by a wide margin, the impact of Victoria's reference to the police was drastically mitigated. *Avis-Rent-A-Car System*, 280 NLRB 580, 581, 582 (1986) (the burden of proof is particularly heavy where the margin of victory is significant); *see S.F.D.H. Associates, L.P. d/b/a Sir Francis Drake Hotel*, 330 NLRB No. 98 (2000) ("Petitioners' large margin of victory" a factor in overruling objections).

(9) The degree to which the misconduct can be attributed to the party against whom objects are filed:

Victoria is a Section 2(13) agent of the Union and it is undisputed that he sent the message to Rivera on November 3, 2019.

In the end, the totality of the *Taylor Wharton* factors establishes that Victoria's reference to the police was isolated, not widely disseminated in an election the Union won by a wide-margin, did not resonate in the minds of unit employees, was not severe and was unlikely to cause fear among employees. Accordingly, Victoria's text to Zorrilla is insufficient to overturn the outcome of the election.

c. Victoria's Reference to the Police Was Not Threat to Contact Immigration.

In its RFR, the Employer inexplicably conflates Vitoria's reference to the police as a threat to call immigration authorities. Simply put, no reasonable interpretation of the text messages can be construed as a threat to contact immigration authorities.⁶ None of Victoria's texts addressed Rivera's immigration status, and there is no record evidence that Victoria made any reference to Rivera's immigration status in the past. Moreover, none of the employees Rivera told about Victoria's text message could interpret his text as an immigration related threat because: (1) she did not tell employees that Victoria made an immigration related threat; and (2) she told the other

⁶ The Employer analyzed Victoria's text under *Labriola Baking Co.*, 361 NLRB 412 (2014 (threat to deport workers constituted objectionable conduct under the Act)).

employees that Victoria's text was in the context of an argument, she cursed at him, and that he only said he would contact the police *if* she contacted him again. As such, Rivera plainly described an argument between her and Victoria and her inappropriate conduct, and did not describe a national origin charged threat. *Pacific Dry Dock & Repair Company.*, 303 NLRB 569, 571 (1991) (employer's threat to call police was provoked and not unlawful). Accordingly, no reasonable employee could interpret Victoria's statement as a threat related to immigration and his text message should not be analyzed under *Labriola Baking Co.*, 361 NLRB 412 (2014).

Finally, while Rivera testified that Victoria's text made her fearful of immigration, again, alleged objectionable statements are evaluated without considering the employees subjective belief. *Picoma Industries*, 296 NLRB 498 ("the subjective reactions of employees to alleged threats are irrelevant to the question of whether there was in fact objectionable conduct, rather the test is based on an objective standard."). Accordingly, Rivera's self-serving testimony regarding her subjective belief has no bearing on the Board's evaluation under *Taylor Wharton*.

3. The Regional Director Correctly Decided that the Union Did Not Threaten Sarah Moran.

a. Factual Background

Sarah Moran ("Moran"), a Raymundos employee, testified that on November 3, 2019, Victoria contacted her and told her something to the effect that the employees should vote for the Union because the employees were immigrants. (Tr. 206:23-207:4). Moran was not credible and evasive when answering the Hearing Officer's and Union's clarifying questions. Eventually, Moran admitted that Victoria did not tell her that the employees would be deported or that the Union or Company would cause them to be deported. (Tr. 206:10-207:15). Additionally, Moran admitted that Victoria did not tell her that the Employer or the Union would call immigration. (Tr.

206:20-207:1). Finally, Moran testified that she told about 7-11 employees about the telephone conversation (Tr. 209:3-16).

Victoria testified that he does not recall any conversations with Moran (Tr. 237:14-16). Additionally, Victoria's cell-phone records demonstrate that he did not call the telephone number 708-275-3904, which the parties stipulated as Moran's correct telephone number. Victoria's cellphone records also indicate that the last time Victoria spoke to Moran was on October 24, 2019. (Tr. U. Ex. 1., p. 4). In this regard, while Victoria did not remember conversations with Moran, upon review of his records he credibility testified that he never said anything to Moran regarding deportation or immigrants during the October 24, 2019 conversation (Tr. 241-244, 247).

b. Sarah Moran Was Not Credible.

Moran was not credible and her testimony was contradictory and ambiguous. First, Moran testified that Victoria told her:

. . . . [the employees] should not let the company represent us because we're immigrants, and so we should let the Union represent us so we don't lose work, and that the company would call immigration on us, and to not worry about me, I'm a citizen, but that the company should not be representing immigrants.

(Tr. 194:13-195:1). Next, when questioned by the Hearing Officer, Moran testified that:

If we didn't vote for the Union – If we voted no for the Union – for the Union to represent us, that Raymundo's was going to call [immigration] because a lot – many of us were immigrants, that Raymundo's was going to call immigration on us.

(Tr. 201:7-21). Then, Moran testified again that Victoria told her that the Employer would call immigration. (Tr. 202:2-18). Thereafter, Moran changed her testimony, and testified that Victoria claimed that the *Union* was going to call immigration on the employees if they did not vote for the Union. (Tr. 202:19-203:3). Identifying Moran's inconsistent testimony, the Hearing Officer asked her if she meant that the Union would call immigration, and Moran testified that Victoria claimed the Union would call immigration. (Tr. 203:10-204:4).

Moran was also inconsistent as to what she remembered Victoria saying versus what she felt like he was saying. When questioned by the Employer, Moran testified generally about what Victoria said during the phone call. Then, after clarifying questions from the Hearing Officer, Moran admitted:

I cannot say exactly what was said. I am not a machine to record conversations. But I can tell you that he told me that we are immigrants, and it was the way that he said it made me think if we didn't vote for them that things would end up – that the end result would be that immigration would be called . . . that I thought that immigration was going to be called.

(Tr. 203:19-204:4). Moran further admitted that Victoria did not say that anyone was going to call immigration:

H.O.: Was there anything else that was said that led you to think the Union was making claims about immigration besides the fact that he just reference – referred to immigrants, or was it just that that made you feel like that's what was being discussed?

SM: Not those words exactly. I don't think he was ever going to say I'm going to call immigration on you. But he said it in another way, using other words.

H.O.: What other words?

SM: Always saying the word immigrants, and because we're immigrants. What does that mean?

HO: Was there anything else that was said that led you to think the Union was making claims about immigration besides the fact that he just referred . . . to immigrants, or was it just that that made you feel like that's what was being discussed?

SM: Not that I can remember. No [sic] exactly how you want me to say it, no. Like I'm going to call on you. No.

(Tr. 206:10-207:15).

It is well established that the Board will not “overturn a hearing officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces [the Board]

that the resolutions are incorrect.” *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). Additionally, an adverse inference may be drawn when a party fails to question a witness about matters that would be thought reasonable where such an omission does not appear unintentional. See *Colorfor Decorator Products*, 228 NLRB 408, 410 (1977).

Moran’s testimony was wildly inconsistent. When subject to direct leading questioning from the Employer, Moran provided a detailed account of what Victoria allegedly said during the November 3 conversation. Then, when subject to further questioning by the Hearing Officer and the Union, Moran drastically changed her story and was vague, evasive, and provided ambiguous responses. Additionally, when asked to clarify her inconsistent responses, Moran became visibly frustrated and upset, and ultimately admitted that all she could remember was that Victoria said something about “immigrants,” and all of the detail she provided on direct examination was based on how the word immigrant made her feel, not was actually said. The record evidence establishes that Moran’s initial testimony was based on heavy coaching from the Employer, and her credibility and the veracity of her story did not hold up to clarifying questioning. Moreover, an adverse inference should be drawn from the Employer’s failure to clarify Moran’s inconsistent testimony through redirect examination. *Colorfor Decorator Products*, 228 NLRB at 410.

Finally, the Employer argues that Moran’s inconsistent testimony was caused by the confused translation between English and Spanish. In this respect, any possible confusion was cured by the Hearing Officer during the hearing. Moran testified that in one instance, she was confusing the Union’s questions that were asked to her in English because she understands some English. (Tr. 204:17-21). However, upon this testimony, the Hearing Officer immediately halted the proceedings, instructed Moran to listen to what the translator asked her, and then instructed the

Union to restart its line of questioning. (Tr. 205:22-206:6). Then, Moran testified that she was still confusing the questions when the Union resumed its cross examination. (Tr. 206:2-9). Again, the Hearing Officer immediately took over questioning, and went to great lengths to ask Moran non-leading questions to cure her confusion. (Tr. 206-207). Moran did not state that she was confused by the Hearing Officer's questions. As such, to the extent Moran was temporarily confused, the Hearing Officer cured the confusion and created a record to where she was only responding to questions she understood.⁷

In the end, the record establishes that Moran was not credible, and the Employer did not establish that the Hearing Officer erred by preponderance of the evidence. Accordingly, the Hearing Officer correctly decided not to rely on Moran's testimony.

c. Statements Made to Moran Did Not Affect Outcome of the Election.

Assuming *arguendo* that the Board overrules the Hearing Officer's credibility determination regarding Moran, the alleged statements would not be objectionable under *Taylor Wharton*. As outlined above, Moran ultimately admitted that someone she believed to be Victoria said something to the affect of referring to the employees as "immigrant(s)," and the majority of what she testified to under direct examination was what she believed he meant by using the word "immigrant(s)" and not what was actually said. (Tr. 206:10-207:15). Based on Moran's admissions, the balance of the *Taylor Wharton* factors weighs against finding the reference to immigrant(s) as objectionable conduct:

⁷ The Employer cites one example of where the translator incorrectly interpreted a witnesses' testimony as evidence that Moran did not change her testimony. However, as the Regional Director correctly identified, the mistaken translation was corrected, and there is no evidence of further mistranslations in the record. (RD Decision p. 4).

(1) The number of incidents:

Moran testified that the man called the employees immigrants during two respective telephone conversations on November 2 and November 3.

(2) The severity of the incident and whether it was likely to cause fear among employees in the voting unit:

The alleged reference to “immigrants” did not violate the Act. While threats involving immigration do not have to be direct, the Board has held that the threat must still be evaluated from the perspective of the reasonable employee. *Labriola Baking Co.*, 361 NLRB 412. In this case, the only threat Moran alleges is based on the word immigrant(s) being stated. Even if the man referred to Moran and the other employees as immigrants, under Board precedent this statement would not rise to the level of an ambiguous or veiled threat to call immigration. *Compare, Willey’s Express, Inc.*, 275 NLRB 631, 632 (1985) (citing *SureTan, Inc.*, 234 NLRB 1187, 1190-91 (1978) (employer asked employees if they have green cards); *Labriola Baking Co.*, 361 NLRB 412 (employers continuous reference to “legal workers” found to be unlawful threat concerning employees’ immigration status); see also *In re Sun Country Citrus, Inc.*, 268 NLRB 700 (1984) (employer raising issue of immigration papers was found to be an unlawful threat concerning immigration). Moreover, especially in the context of a threat to call the police – which is what the Employer alleged in its objection – no reasonable employee could interpret a benign reference to immigrants as a threat to call the police. *See Rav Truck & Trailer Repairs, Inc.*, 02-CA-220395, 2019 BL 260305 (NLRB, 2019) (the employer’s general statements regarding employees’ immigration status was not a threat absent the employer stating it would take action based on immigration status). Accordingly, a reasonable employee would not fear deportation by the reference to immigrant(s).

(3) The number of employees in the voting unit who were subjected to the misconduct:

See response to *Taylor Wharton* factor No. 6, below.

(4) The proximity of the misconduct to the date of the election:

Moran testified that that the phone call occurred during the critical period before the second election.

(5) The degree to which the misconduct persists in the minds of employees in the voting unit:

The Employer failed to adduce any non-hearsay evidence regarding the how other employees interpreted the phone calls.

(6) The extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit:

The alleged reference to immigrants was isolated and not widely disseminated. First, the reference to immigrants was made to a single employee out of the presence of other employees. See *Extruded Metals, Inc.*, 328 at 84 (isolated statement known by few employees was insufficient to sustain objection). Second, the reference was not widely disseminated, as Moran testified that she told only 7-9 employees out 135 employees in the voting unit. *Q.B. Rebuilders*, 312 NLRB at 1141 (overturning election where threats to call the INS on employees who did not vote in favor of the union were disseminated to at least one-third of bargaining unit, and one-third of bargaining unit); *Avis-Rent-A-Car System*, 280 NLRB at 582 (objectional conduct not widely disseminated amongst bargaining unit employees). Accordingly, because the alleged reference to immigrants was an isolated comment made to a single employee, the totality of the circumstances weighs against finding the comment as objectionable. See *M.B. Consultants, Ltd.*, 328 NLRB at 1089 (insufficient evidence that employer's promise of benefits could have affected election,

where promise was made to two employees, there was no evidence it was disseminated to others, and union lost election by six votes).

(7) The effect, if any, of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection:

The Union did not take any steps to alleviate or rectify the alleged reference to immigrants.

(8) The closeness of the vote:

The Union won election by 21 votes, and the handful of employees Moran told about the conversation would not have affected the outcome of the election. As such, because the union won by a wide margin, the impact of the telephone conversation was drastically mitigated. *Avis-Rent-A-Car System*, 280 NLRB 580, 581, 582 (1986) (the burden of proof is particularly heavy where the margin of victory is significant); see *S.F.D.H. Associates, L.P. d/b/a Sir Francis Drake Hotel*, 330 NLRB No. 98 (2000) ("Petitioners' large margin of victory" a factor in overruling objections).

(9) The degree to which the misconduct can be attributed to the party against whom objects are filed:

The Employer failed to establish that the Union called Moran on November 2 or November 3. Victoria credibly testified that he did not remember speaking to Moran, but even so, his phone records demonstrate that he did not call Moran on November 2 or November 3. Additionally, based on Victoria's phone records, the last time he spoke to Moran was on October 24, and Victoria credibly denied making comments regarding immigrants or deportation during the October 24 conversation. As such, the Employer has failed to establish that the Union was responsible for the phone calls Moran received on November 2 and November 3.

In the end, the totality of the *Taylor Wharton* factors establishes that the alleged reference to immigrants was isolated, not widely disseminated in an election the Union won by a wide-margin, did not resonate in the minds of unit employees, was not severe, was unlikely to cause fear

among employees, and cannot be attributed to the Union. Accordingly, Moran's allegation regarding the phone calls she received are insufficient to overturn the outcome of the election.

CONCLUSION

For all of the reasons argued herein, Local 881 United Food and Commercial Workers respectfully requests that the Board affirm the Regional Director's Decision and Certification of Representative.

Date: February 20, 2020

Respectfully Submitted,

/s/Joseph C. Torres
Joseph C. Torres
Counsel for Petitioner

The Karmel Law Firm
221 N. LaSalle Street, Suite 1550
Chicago, Illinois 60601
p: (312) 641-2910
f: (312) 641-0781
joe@karmellawfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that on February 20, 2020 a true and correct copy of the forgoing document was e-filed with the Board, using the NLRB E-File & E-Service System, and a copy of the forgoing document was served via email on the following:

Peter Sung Ohr
Regional Director
National Labor Relations Board, Region 13
219 S. Dearborn Street, Suite 808
Chicago, IL 60604-2027
Attention: Lori A. Brown (lori.brown@nrlb.gov)

Gregory H. Andrews
Dana Elfvin
Jackson Lewis P.C.
150 N. Michigan Avenue, Suite 2500
Chicago, IL 60601
Gregory.Andrews@jacksonlewis.com
Dana.Elfvin@jacksonlewis.com

Counsel for Employer

Date: February 20, 2020

By: /s/Joseph C. Torres
Joseph C. Torres

The Karmel Law Firm
221 N. LaSalle Street, Suite 1550
Chicago, Illinois 60601
p: (312) 641-2910
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joe@karmellawfirm.com

EXHIBIT A



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Tel 312 787-4949
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ALBANY, NY	GREENVILLE, SC	MINNEAPOLIS, MN	PROVIDENCE, RI
ALBUQUERQUE, NM	HARTFORD, CT	MONMOUTH COUNTY, NJ	RALEIGH, NC
ATLANTA, GA	HONOLULU, HI*	MORRISTOWN, NJ	RAPID CITY, SD
AUSTIN, TX	HOUSTON, TX	NEW ORLEANS, LA	RICHMOND, VA
BALTIMORE, MD	INDIANAPOLIS, IN	NEW YORK, NY	SACRAMENTO, CA
BIRMINGHAM, AL	JACKSONVILLE, FL	NORFOLK, VA	SALT LAKE CITY, UT
BOSTON, MA	KANSAS CITY REGION	OMAHA, NE	SAN DIEGO, CA
CHICAGO, IL	LAS VEGAS, NV	ORANGE COUNTY, CA	SAN FRANCISCO, CA
CINCINNATI, OH	LONG ISLAND, NY	ORLANDO, FL	SAN JUAN, PR
CLEVELAND, OH	LOS ANGELES, CA	PHILADELPHIA, PA	SEATTLE, WA
DALLAS, TX	MADISON, WI	PHOENIX, AZ	ST. LOUIS, MO
DAYTON, OH	MEMPHIS, TN	PITTSBURGH, PA	TAMPA, FL
DENVER, CO	MIAMI, FL	PORTLAND, OR	WASHINGTON DC REGION
DETROIT, MI	MILWAUKEE, WI	PORTSMOUTH, NH	WHITE PLAINS, NY
GRAND RAPIDS, MI			

*through an affiliation with Jackson Lewis P.C., a Law Corporation

MY DIRECT DIAL IS: (312) 803-2504
MY EMAIL ADDRESS IS: GREGORY.ANDREWS@JACKSONLEWIS.COM

November 13, 2019

Peter Sung Ohr
Regional Director
National Labor Relations Board
Region 13
219 S. Dearborn St., Suite 808
Chicago, IL 60604

VIA E-FILE

Re: Ramundo's Food Group. — Case No. 13-RC-244834 Rerun Election

Dear Mr. Ohr:

Enclosed please find for filing Objections to Election in the above captioned matter.

Very truly yours,

Gregory H. Andrews

Enclosures

cc: Joseph C. Torres, Esq. (via email) (Offer of Proof Not Included)

**NATIONAL LABOR RELATIONS BOARD
REGION 13**

**LOCAL 881 UNITED FOOD AND
COMMERCIAL WORKERS,**

**Petitioner,
and**

Case No. 13-RC-244834

RAYMUNDO'S FOOD GROUP,

Respondent.)

OBJECTIONS TO ELECTION

NOW COMES Respondent, Raymundo's Food Group ("Raymundos" or "Company") and, pursuant to Rule 102.69(a) of the Rules and Regulations of the National Labor Relations Board, hereby files its Objections to Conduct Affecting the Results of the Representation Election in the above captioned matter which occurred on November 4, 2019. In support of its Objections, Respondent states as follows:

Local 881 United Food and Commerical Workers ("Local 881"), through itself and its agents, unlawfully interfered with the election by:

1. Threatening employees by telling them that they could be physically harmed if they vote for the Company.
2. Threatening employees by telling them they would be arrested by the Police if they supported the Company.
3. A Section 2(11) Supervisor, Claudia Jiminez, Threatening employees telling them that they will lose their jobs if they support the Company.

By this and other conduct, the Petitioner engaged in objectionable conduct during the critical period before the election that unlawfully affected the results of the representation election.



Respectfully submitted,

/S/Gregory H. Andrew
Gregory H. Andrews
Attorney for Raymundos

CERTIFICATE OF SERVICE

I, Gregory H. Andrews, an attorney representing Raymundos, hereby certify that I have served a copy of the Union's Objections to Conduct Affecting the Results of Election in Case 13-RC-244834 on the following by e-file and email this 13th day of November 2019.

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
Dirksen Federal Building
219 S. Dearborn Street, Suite 808
Chicago, IL 60603-2017
Fax: (312) 886-1341
(Offer of proof included)

Joseph Torres
THE KARMELO LAW FIRM
221N. LaSalle Street
Suite 1550
Chicago, Illinois 60601
T: (312) 641-2910
F: (312) 641-0781
joe@karmellawfirm.com

(Offer of Proof Not Included)

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

and

Case 13-RC-244834

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 881**

Petitioner

**ORDER DIRECTING HEARING AND
NOTICE OF HEARING ON OBJECTIONS**

Pursuant to a Decision and Direction of Second Election, following a post-election hearing and Hearing Officer's Report, a manual rerun election was conducted on November 6, 2019, to determine whether a unit of employees of Raymundo's Food Group, LLC (Employer) wishes to be represented for the purposes of collective bargaining by United Food and Commercial Workers Local 881 (Petitioner). The voting unit consisted of:

Included: All full-time and regular part-time Packers, Formulators, Operators, Lead Operators, Cooks, Floor Clerks, Quality Control Techs, Sanitation Techs, Maintenance Techs, Forklift Operators, Janitors and Material Handlers employed by the Employer at its facility currently located at 7424 South Lockwood Ave., Bedford Park, IL.

Excluded: All other employees, temporary employees, managers, office clerical employees, professional employees and guards and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 135 eligible voters, 66 cast ballots in favor of the Petitioner and 45 cast ballots against representation. There were three void ballots and three challenged ballots. The challenges were not sufficient in number to affect the results of the election. The Petitioner received a majority of the valid votes cast.

THE OBJECTIONS

On November 13, 2019, the Employer timely filed objections to conduct affecting the results of the election. A copy of the objections is attached. The Employer concurrently filed its offer of proof. I have considered the Employer's objections and its offer of proof.

CONCLUSION AND ORDER

I have concluded that the evidence submitted by the Petitioner in support of its objections raise substantial and material facts that could be grounds for overturning the election if introduced at a hearing. In accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations,

IT IS ORDERED, that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

NOTICE OF HEARING

Starting at 9:00 a.m. on December 2, 2019, in a hearing room at the offices of Region 13, National Labor Relations Board, 219 South Dearborn Street, Suite 808, Chicago, Illinois 60604, the hearing on objections, as described above, will be conducted before a Hearing Officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated at Chicago, Illinois this 19th day of November 2019.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board – Region 13
219 South Dearborn Street, Suite 808
Chicago, Illinois 60604-2027

**NATIONAL LABOR RELATIONS BOARD
REGION 13**

**LOCAL 881 UNITED FOOD AND
COMMERCIAL WORKERS,**

**Petitioner,
and**

Case No. 13-RC-244834

RAYMUNDO'S FOOD GROUP,

Respondent.)

OBJECTIONS TO ELECTION

NOW COMES Respondent, Raymundo's Food Group ("Raymundos" or "Company") and, pursuant to Rule 102.69(a) of the Rules and Regulations of the National Labor Relations Board, hereby files its Objections to Conduct Affecting the Results of the Representation Election in the above captioned matter which occurred on November 4, 2019. In support of its Objections, Respondent states as follows:

Local 881 United Food and Commerical Workers ("Local 881"), through itself and its agents, unlawfully interfered with the election by:

1. Threatening employees by telling them that they could be physically harmed if they vote for the Company.
2. Threatening employees by telling them they would be arrested by the Police if they supported the Company.
3. A Section 2(11) Supervisor, Claudia Jiminez, Threatening employees telling them that they will lose their jobs if they support the Company.

By this and other conduct, the Petitioner engaged in objectionable conduct during the critical period before the election that unlawfully affected the results of the representation election.

jackson|lewis.

Respectfully submitted,

/S/Gregory H. Andrew
Gregory H. Andrews
Attorney for Raymundos

EXHIBIT C

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 13-RC-244834

**RAYMUNDO'S FOOD GROUP LLC
Employer**

And

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881
Petitioner**

**Place: Chicago, IL
Date: 12/02/19
Pages: 144-268
Volume: 2**

OFFICIAL REPORTERS

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<p style="text-align: right;">Page 144</p> <p style="text-align: center;">UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 13</p> <p>RAYMUNDO'S FOOD GROUP LLC)) Employer)) And) Case 13-RC-244834) UNITED FOOD AND COMMERCIAL) WORKERS LOCAL 881,)) Petitioner)</p> <p>The above-entitled matter came on for hearing pursuant to notice before CLINTON NEWMAN, Hearing Officer, at the National Labor Relations Board, 219 South Dearborn Street, 8th Floor, Chicago, Illinois, on Monday, December 2, 2019, at 9:00 a.m.</p>	<p style="text-align: right;">Page 146</p> <p style="text-align: center;">INDEX</p> <p>1 2 3 WITNESS: DX CX RDX RCX EXAM VOIR DIRE 4 VIRGINIA RIVERA: 156 171 185 186 178 5 6 SARA MORAN: 189 204 201 7 208 207 8 9 MARIA ZORRILLA: 211 216 223 224 10 11 LORENZO FERNANDEZ: 228 12 13 EDUARDO VICTORIA: 232 242 256 14 15 SUSAN GEORGELOS: 259 264 262 16 263 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 145</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 On behalf of the Petitioner: 4 THE KARMEL LAW FIRM 221 NORTH LASALLE STREET 5 SUITE 1550 CHICAGO, ILLINOIS 60601 6 312-702-2718 BY: MR. JOSEPH C. TORRES 7 joe@karmellawfirm.com 8 9 On behalf of the Employer: 10 JACKSON LEWIS, P.C. 150 NORTH MICHIGAN AVENUE 11 SUITE 2500 CHICAGO, ILLINOIS 60601 12 312-787-4949 BY: MR. GREGORY H. ANDREWS gregory.andrews@jacksonlewis.com 13 -and 14 MS. DANA S. ELFVIN dana.elfvin@jacksonlewis.com 15 16 17 18 ALSO PRESENT: PATTY GARVEY - SPANISH INTERPRETER 19 20 MOISES ZAVALA 21 22 23 24 25</p>	<p style="text-align: right;">Page 147</p> <p style="text-align: center;">E X H I B I T S</p> <p>1 2 EXHIBITS FOR IDENTIFICATION IN EVIDENCE 3 BOARD'S 4 B-1A-1D 150 151 5 6 EMPLOYER'S 7 8 E-1 157 227 9 10 UNION'S 11 U-1 260 263 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 (Pages 144 to 147)

<p style="text-align: right;">Page 148</p> <p>1 HEARING OFFICER NEWMAN: On the record. 2 The hearing will be in order. This is a 3 hearing before the National Labor Relations Board in 4 the matter of Raymundo Food Group, LLC, Case 5 No. 13-RC-244834 pursuant to the order of the 6 Regional Director dated November 19, 2019. The 7 Hearing Officer conducting this hearing is Clinton 8 Newman. The official reporter makes the only 9 official transcript of these proceedings, and all 10 citations and briefs and arguments must refer to the 11 official record. In the event that any of the 12 parties wishes to make off-the-record remarks, 13 requests to make such remarks should be directed to 14 the Hearing Officer and not to the official reporter. 15 Statements of reasons in support of motions and 16 objections should be specific and concise. 17 Exceptions automatically follow all adverse rulings. 18 Objections and exceptions may, on appropriate 19 request, be permitted to an entire line of 20 questioning. 21 It appears from the Regional Director's 22 order dated November 19, 2019 that this hearing is 23 held for the purposes of taking evidence concerning 24 three objections filed by the Employer. In due 25 course the Hearing Officer will prepare and file with</p>	<p style="text-align: right;">Page 150</p> <p>1 So at this point what I'd like to do is 2 swear in our translator as it's my understanding that 3 we'll have multiple witnesses that will require 4 translation. So if you would please state your name 5 for the record. 6 THE INTERPRETER: Patricia Garvey. 7 HEARING OFFICER NEWMAN: Okay. And is there a 8 particular translation service that you're affiliated 9 with? 10 THE INTERPRETER: I am working for Schreiber Net 11 today. S-C-H-R-E-I-B-E-R, Net. 12 HEARING OFFICER NEWMAN: If you would, please 13 raise your right hand. 14 (WHEREUPON, THE INTERPRETER WAS 15 DULY SWORN.) 16 THE INTERPRETER: I do. 17 HEARING OFFICER NEWMAN: Okay. Great. 18 Then let's go off the record, please. 19 (WHEREUPON, WE WERE OFF THE 20 RECORD.) 21 HEARING OFFICER NEWMAN: Back on the record. 22 So the first thing I'd like to do is move 23 for the admission of Board Exhibit 1 which is 1A-D 24 with D being an index and description of the formal 25 documents. So move for the admission of Board</p>
<p style="text-align: right;">Page 149</p> <p>1 the Regional Director his report and recommendations 2 in this proceeding and will cause a copy thereof to 3 be served on each of the parties. The procedure to 4 be followed from that point forward is set forth in 5 Section 102.69, Rules and Regulations. 6 Will counsel and other representatives for 7 the parties please state their appearances for the 8 record. 9 MR. ANDREWS: Greg Andrews on behalf of the 10 Employer. 11 MS. ELFVIN: Dana Elfvin on behalf of the 12 Employer. 13 MR. TORRES: Joe Torres on behalf of the Union. 14 HEARING OFFICER NEWMAN: So one of the 15 objections here concerns on it's face a potential 16 supervisor, so I'll just remind you that you should 17 please be aware that supervisory status involves a 18 statutory exclusion, and -- so anytime a party makes 19 an allegation about supervisory status, just the 20 Board's standard procedure is that the party making 21 that assertion has the burden of presenting evidence 22 to that effect, and that evidence must be specific, 23 detailed and clear in support of your position. 24 General conclusionary statements by witnesses will 25 not be sufficient.</p>	<p style="text-align: right;">Page 151</p> <p>1 Exhibit 1. 2 Employer. 3 MR. ANDREWS: No objection. 4 HEARING OFFICER NEWMAN: Union. 5 MR. TORRES: No objection. 6 HEARING OFFICER NEWMAN: Then it's received. 7 So the next thing I'd like to explore at 8 this point is whether or not there are any subpoena 9 issues, motions or any kind of procedural concerns 10 that we need to address at this time that either 11 party are aware of. 12 Employer. 13 MR. ANDREWS: No. 14 HEARING OFFICER NEWMAN: Union. 15 MR. TORRES: Actually, there might be one 16 possible issue. 17 It looks like we received receipt that 18 Johnnie's Poultry Statement was made. I assume 19 they're not being provided under -- The actual 20 statements were provided in the subpoena request, and 21 I just want to clarify the Employer's reasoning for 22 not providing the actual statements. 23 MR. ANDREWS: There were no written statements. 24 MR. TORRES: Okay. So all this is is a receipt 25 of -- that you interviewed the witness.</p>

<p style="text-align: right;">Page 152</p> <p>1 MR. ANDREWS: Yes.</p> <p>2 MR. TORRES: Okay. Thank you. Then we're good.</p> <p>3 HEARING OFFICER NEWMAN: So then just to</p> <p>4 clarify, Union, there are no subpoena issues that</p> <p>5 you're aware of?</p> <p>6 MR. TORRES: There are no subpoena issues that</p> <p>7 we're aware of at this time.</p> <p>8 HEARING OFFICER NEWMAN: Okay. All right. So</p> <p>9 if there are no motions, subpoenas or procedural</p> <p>10 issues at this time, I understand, Employer, you have</p> <p>11 a stipulation you'd like to raise?</p> <p>12 MR. ANDREWS: Yes, the Employer proposes a</p> <p>13 stipulation as follows. Edward Victoria is an</p> <p>14 employee and agent of Local 881, the Union in this</p> <p>15 matter.</p> <p>16 MR. TORRES: The only, I guess, correction the</p> <p>17 Union would have is his name is Eduardo.</p> <p>18 HEARING OFFICER NEWMAN: Is it E-D-U-A-R-D-O?</p> <p>19 MR. TORRES: Yes.</p> <p>20 HEARING OFFICER NEWMAN: And just Victoria, like</p> <p>21 it sounds?</p> <p>22 MR. TORRES: Yes.</p> <p>23 HEARING OFFICER NEWMAN: So, Employer, you're</p> <p>24 offering -- or requesting a stipulation that Eduardo</p> <p>25 Victoria is a Section 213 agent of the Union; is that</p>	<p style="text-align: right;">Page 154</p> <p>1 presentation of its case. They may remain in the</p> <p>2 hearing room even if they are going to testify or</p> <p>3 have testified.</p> <p>4 The order also means that from this point</p> <p>5 on until the hearing is finally closed, no witness</p> <p>6 may discuss with other potential witnesses either the</p> <p>7 testimony that they have given or that they intend to</p> <p>8 give. The best way to avoid any problems is to</p> <p>9 simply not discuss the case with any other potential</p> <p>10 witness until after the hearing is completed. Under</p> <p>11 the rule as applied by the Board, with one exception,</p> <p>12 counsel for a party may not in any manner, including</p> <p>13 by showing of transcripts of testimony, inform a</p> <p>14 witness about the content of the testimony given by a</p> <p>15 preceding witness without expressed permission of the</p> <p>16 Hearing Officer. However, counsel for a party may</p> <p>17 inform counsel's own witness of the content of</p> <p>18 testimony and may show a witness transcripts of</p> <p>19 testimony given by a witness for the opposing side in</p> <p>20 order to prepare for rebuttal of such testimony.</p> <p>21 I expect counsel to police their</p> <p>22 sequestration order and to bring any violations of it</p> <p>23 to my attention immediately. Also, it is the</p> <p>24 obligation of counsel to inform potential witnesses</p> <p>25 of their obligations under the order. It is also</p>
<p style="text-align: right;">Page 153</p> <p>1 correct?</p> <p>2 MR. ANDREWS: That's correct.</p> <p>3 HEARING OFFICER NEWMAN: And, Union, do you so</p> <p>4 stipulate?</p> <p>5 MR. TORRES: Yes.</p> <p>6 HEARING OFFICER NEWMAN: Then the stipulation is</p> <p>7 received.</p> <p>8 Well, Employer, the floor is yours</p> <p>9 whenever you're ready.</p> <p>10 MR. ANDREWS: All right. The Employer calls as</p> <p>11 its first witness Virginia Rivera.</p> <p>12 HEARING OFFICER NEWMAN: Oh. Actually, hold on</p> <p>13 one second before we do that. My apologies. Let's</p> <p>14 go off the record just for a second.</p> <p>15 (WHEREUPON, WE WERE OFF THE</p> <p>16 RECORD.)</p> <p>17 HEARING OFFICER NEWMAN: Back on the record.</p> <p>18 So the Union had requested a sequestration</p> <p>19 order, and the Employer does not oppose that, and so</p> <p>20 I have granted a request to sequester witnesses.</p> <p>21 This means that all persons who are going to testify</p> <p>22 in this proceeding, with specific exceptions, may</p> <p>23 only be present in the hearing room when they are</p> <p>24 giving testimony. Each party may select one person</p> <p>25 to remain in the room and assist it in the</p>	<p style="text-align: right;">Page 155</p> <p>1 recommended that as witnesses leave the witness stand</p> <p>2 upon completion of their testimony, they be reminded</p> <p>3 that they are not to discuss their testimony with any</p> <p>4 other witness until the hearing is completed. Okay.</p> <p>5 So prior to my recollection that I wanted</p> <p>6 to address the sequestration order, Employer, I had</p> <p>7 asked you if you were ready to go with your first</p> <p>8 witness.</p> <p>9 MR. ANDREWS: And we are.</p> <p>10 HEARING OFFICER NEWMAN: Okay.</p> <p>11 MR. ANDREWS: Employer calls as its first</p> <p>12 witness Virginia Rivera.</p> <p>13 HEARING OFFICER NEWMAN: So please remain</p> <p>14 standing and raise your right hand.</p> <p>15 THE WITNESS: Yes.</p> <p>16 (WHEREUPON, THE WITNESS WAS DULY</p> <p>17 SWORN.)</p> <p>18 HEARING OFFICER NEWMAN: Please be seated.</p> <p>19 Again, please tell us your name for the</p> <p>20 record.</p> <p>21 THE WITNESS: Virginia Negretti Rivera.</p> <p>22 Virginia Rivera.</p> <p>23 HEARING OFFICER NEWMAN: Go ahead.</p> <p>24</p> <p>25</p>

3 (Pages 152 to 155)

<p style="text-align: right;">Page 156</p> <p>1 PATTY GARVEY, 2 called as an interpreter herein, was sworn to 3 interpret all of the questions from English to 4 Spanish and all of the answers from Spanish to 5 English. 6 VIRGINIA RIVERA, 7 called as a witness herein, having been first duly 8 sworn, was examined and testified through the 9 interpreter as follows: 10 DIRECT EXAMINATION 11 BY MR. ANDREWS: 12 Q. Good morning, Virginia. 13 A. Good morning. 14 Q. Where do you work? 15 A. In Raymundo's. 16 Q. What was your job in August of this year? 17 A. Operator. 18 Q. What was your job in October of this year? 19 A. Operator. 20 Q. What shift do you work on? 21 A. Third shift. 22 Q. Have you always worked on third shift? 23 A. Yes. 24 Q. In October of this year were you contacted 25 by the Union?</p>	<p style="text-align: right;">Page 158</p> <p>1 to you? 2 A. This is the same number that I have, and 3 this is the same number of Eduardo's. 4 Q. How do you know that this is the same 5 number as Eduardo's? 6 A. Because here's the number -- Here's his 7 number, and here's the number on the messages that 8 were sent to me. 9 Q. When you say here is his number, what are 10 you referring to? 11 A. Here it is written on Page 6. The same 12 number appears here, and it's the same number that 13 the messages were sent from. 14 Q. On Page 6 are you referring to where it 15 says -- And I'll do my best to read the Spanish out 16 loud -- Para mas informacion contacte, Eduardo 17 Victoria? 18 A. Yes. 19 Q. Did you engage in any text messaging with 20 Eduardo? 21 A. Yes. 22 Q. Is that included in this exhibit? 23 A. Yes. 24 Q. What pages does your text messaging with 25 Eduardo appear?</p>
<p style="text-align: right;">Page 157</p> <p>1 A. Yes. 2 Q. We're going to show you what we've marked 3 as Exhibit 1. We will hand out a copy of that 4 exhibit to the Hearing Officer, the court reporter, 5 and the Union's attorney, as well as yourself. 6 HEARING OFFICER NEWMAN: Just a reminder, 7 Employer, to the best of your ability as it's 8 practicable, please lay a road map as to what 9 specific objection you're addressing. 10 MR. ANDREWS: Right. 11 This witness will be addressing Objection 12 No. 2. 13 HEARING OFFICER NEWMAN: Okay. 14 BY MR. ANDREWS: 15 Q. Would you please take a look at the 16 exhibit that we've handed you. 17 A. (Witness complying.) 18 Q. Have you now had an opportunity to review 19 the exhibit? 20 A. Yes. 21 Q. What is that exhibit that's in front of 22 you? 23 A. The messages that were sent to me by the 24 Union. 25 Q. How do you know that the Union sent them</p>	<p style="text-align: right;">Page 159</p> <p>1 A. On Page 10. On 6, Page 6 there were 2 various messages that he was sending me. It's almost 3 on all the pages where he was sending me messages. 4 Q. And are you replying back to Eduardo on 5 any of the pages? 6 A. Yes. It was when it was bothering me a 7 lot and I felt in danger. 8 Q. On Page 10 I see the word policia. 9 HEARING OFFICER NEWMAN: Really quickly before 10 we go any further. I didn't mean to cut you off, 11 Employer, but I just want to clarify something here. 12 So on this exhibit some of the text 13 messages are in -- under a darker background and some 14 are under a lighter background. 15 Can you clarify which are yours and which 16 are the text messages that were sent to you? 17 THE WITNESS: The lighter bubble is the one that 18 they were sending. Mine were in the darker bubbles. 19 HEARING OFFICER NEWMAN: Okay. 20 BY MR. ANDREWS: 21 Q. So I want to direct your attention to the 22 lighter bubble about three-quarters of the way down 23 Page 10. 24 A. Okay. Page 10? 25 Q. Yes, Page 10.</p>

4 (Pages 156 to 159)

<p style="text-align: right;">Page 160</p> <p>1 Based on this message in the lighter</p> <p>2 bubble that includes the word policia, did you</p> <p>3 believe that the Union was going to report you to the</p> <p>4 police?</p> <p>5 A. Yes. I was very afraid. I didn't even</p> <p>6 want to go out. I didn't want to leave the house. I</p> <p>7 told my children not to open the door for anyone</p> <p>8 because I was afraid that if they opened the door,</p> <p>9 that immigration was going to come.</p> <p>10 Q. Did you ever share your concern that you</p> <p>11 just testified to with anyone at Raymundo's?</p> <p>12 A. Yes. I told -- I told various people. I</p> <p>13 told maybe 10 or 11 people at work because I was very</p> <p>14 afraid, and I thought that maybe the police would</p> <p>15 follow me or follow me home.</p> <p>16 Q. When did you share -- I'm sorry.</p> <p>17 HEARING OFFICER NEWMAN: Do you remember which</p> <p>18 employees you told? You said there were 10 or 11 of</p> <p>19 them?</p> <p>20 THE WITNESS: Yeah, they were other operators,</p> <p>21 some people that worked in the kitchen, others that</p> <p>22 worked with me on the line.</p> <p>23 HEARING OFFICER NEWMAN: Do you recall the names</p> <p>24 of any of those individuals?</p> <p>25 THE WITNESS: Yes. I remember some of them.</p>	<p style="text-align: right;">Page 162</p> <p>1 And you've described that you've had</p> <p>2 conversations with various people about the message.</p> <p>3 What exactly if you can recall did you</p> <p>4 tell each of these individuals that you just listed</p> <p>5 out about the message? What did you tell them</p> <p>6 exactly?</p> <p>7 THE WITNESS: The same thing the messages said.</p> <p>8 I said that when -- I said what I was reacting to the</p> <p>9 messages, what I said in response to the messages and</p> <p>10 it's a bad word. They -- I asked why were they</p> <p>11 sending me so many messages, why were they telling me</p> <p>12 so many offensive things.</p> <p>13 THE INTERPRETER: And the witness used a word</p> <p>14 I'm not familiar with, so interpreter --</p> <p>15 HEARING OFFICER NEWMAN: Let's go off the record</p> <p>16 for a second.</p> <p>17 (WHEREUPON, WE WERE OFF THE</p> <p>18 RECORD.)</p> <p>19 HEARING OFFICER NEWMAN: Back on the record.</p> <p>20 We had gone off the record just for a</p> <p>21 second there because it appeared that we might have</p> <p>22 had to have looked up a word that the translator</p> <p>23 wasn't familiar with. It turns out there is no issue</p> <p>24 and that the translator is actually familiar with the</p> <p>25 word that she read.</p>
<p style="text-align: right;">Page 161</p> <p>1 HEARING OFFICER NEWMAN: Can you tell us the</p> <p>2 names of the individuals you remember?</p> <p>3 THE WITNESS: I told Griselda, Jesus. I told</p> <p>4 Maria, and Maria de Jesus. I told another lady who</p> <p>5 was also named Griselda. I told another person.</p> <p>6 What was her name? It was Isabella. I told Maria,</p> <p>7 but I don't remember this Maria's last name. There</p> <p>8 were some others, but I don't remember who else. I</p> <p>9 told Gerardo. Who else? Teresa as well. Who else</p> <p>10 did I tell? Who else did I share it with? Maria --</p> <p>11 Maria. It's another Maria who works there with me.</p> <p>12 Yes.</p> <p>13 BY MR. ANDREWS:</p> <p>14 Q. When did you share your concerns with</p> <p>15 these Raymundo's employees that you just listed?</p> <p>16 A. Since they started bothering me. Since</p> <p>17 they started sending me messages.</p> <p>18 HEARING OFFICER NEWMAN: Since who started</p> <p>19 sending you messages?</p> <p>20 THE WITNESS: That the Union started sending me</p> <p>21 messages, and they started calling me, and they</p> <p>22 called on Saturday and Sunday at any hour.</p> <p>23 HEARING OFFICER NEWMAN: I have one other</p> <p>24 question just for clarification, Employer, and I'm</p> <p>25 going to let you jump back in.</p>	<p style="text-align: right;">Page 163</p> <p>1 So if you want to continue.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Why are you sending so many messages? Why</p> <p>4 are you telling us so many offensive things, calling</p> <p>5 me so many offensive names? You're calling me</p> <p>6 Pinocchio, a double-faced rat, an Indian. You think</p> <p>7 that we're ignorant people, and we are none of those</p> <p>8 things.</p> <p>9 HEARING OFFICER NEWMAN: And, Union, did you</p> <p>10 have something?</p> <p>11 MR. TORRES: Yeah. I'm going to ask at some</p> <p>12 point here that this exhibit be read -- translated by</p> <p>13 the translator before I even begin cross.</p> <p>14 HEARING OFFICER NEWMAN: Yeah, I was thinking</p> <p>15 the same thing.</p> <p>16 MR. TORRES: Thank you.</p> <p>17 HEARING OFFICER NEWMAN: Continue, Employer.</p> <p>18 BY MR. ANDREWS:</p> <p>19 Q. Did you share -- The concern that you</p> <p>20 testified to a moment ago about the police, did you</p> <p>21 share that with Raymundo's employees?</p> <p>22 A. Yes, because I was very afraid. I didn't</p> <p>23 know what to do.</p> <p>24 HEARING OFFICER NEWMAN: How many of those</p> <p>25 employees that you named or made reference to did you</p>

5 (Pages 160 to 163)

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<p style="text-align: right;">Page 164</p> <p>1 specifically tell about the police, the reference to 2 the police? 3 THE WITNESS: I told various people I was very 4 afraid and I didn't know what to do, and I thought 5 that immigration was going to come for me. 6 HEARING OFFICER NEWMAN: Okay. But it's 7 important that we clarify how many of the employees 8 that you talked about, how many of those employees 9 can you recall specifically -- that you told them 10 about -- specifically about the reference to the 11 police? 12 THE WITNESS: I told about 10 people. Because 13 I'm a machine operator, I can't be walking around 14 talking with a lot of different people. But when we 15 were in the break or eating area, that's when I told 16 all of these people. 17 HEARING OFFICER NEWMAN: Okay. 18 MR. ANDREWS: We have no further questions for 19 this witness. 20 HEARING OFFICER NEWMAN: So at this point I 21 think it's appropriate to follow up on a concern 22 raised by the Union which is that the reader of this 23 record, unless they are a Spanish speaker, will not 24 be able to understand the context of the text 25 message. I don't think we probably need to go all</p>	<p style="text-align: right;">Page 166</p> <p>1 MR. ANDREWS: And could we ask that she reads 2 the captions to the pictures and also try to explain 3 if it's coming from the left side. I believe it's 4 the lighter bubble. 5 THE INTERPRETER: Would you like me to use light 6 bubble, dark bubble? 7 HEARING OFFICER NEWMAN: That's perfect, that 8 way we'll be able to follow along. 9 MR. TORRES: As well as the dates and times on 10 these as well to keep it organized. 11 THE INTERPRETER: I'll be as specific as 12 possible. 13 HEARING OFFICER NEWMAN: Okay. Oh, one other 14 thing. If it makes sense to do so, maybe just tell 15 us too what page you're reading off of. 16 THE INTERPRETER: Plaintiff's Exhibit 1, Page 2, 17 from number 224-234-4261, iMessage, Monday, 18 October 28, 1:56 p.m. Remember the gathering of the 19 Union on Wednesday, October 30th, 3:00 p.m. at Ford 20 City Food Area. Every day there are more people who 21 decide to vote yes for the Union. Spread the word. 22 Tuesday, October 29, 11:37 a.m. To work with a Union 23 is a better job, and to work with -- in a better job 24 means a better life. Sick days paid and personal 25 days paid, medical insurance access, higher salaries.</p>
<p style="text-align: right;">Page 165</p> <p>1 the way through all 10 pages. Do you? 2 MR. TORRES: Yes. I was actually going to ask. 3 HEARING OFFICER NEWMAN: You want to actually go 4 through the whole thing? 5 MR. TORRES: I know it's going to take some 6 time, but I just need to clarify that based on some 7 things she testified to. 8 MR. ANDREWS: We don't have any objection to 9 that. 10 HEARING OFFICER NEWMAN: Do the parties think 11 it's most appropriate to just have the translator 12 read it into the record? 13 MR. TORRES: Yes. 14 HEARING OFFICER NEWMAN: As opposed to having 15 the witness read it. 16 MR. ANDREWS: Yeah, I think it will probably be 17 faster. 18 HEARING OFFICER NEWMAN: Okay. Let's make sure 19 too, if you would -- She was flipping through the 20 pages a little bit -- 21 THE INTERPRETER: That they're in order? 22 HEARING OFFICER NEWMAN: Make sure before you 23 get started that they're in order. You'll notice 24 some of the text messages require that you find the 25 full message maybe on the page before or page after.</p>	<p style="text-align: right;">Page 167</p> <p>1 A Union can change your life for the better. You 2 deserve it. Wednesday, October 30, 5:03 p.m. Yes, 3 it was done, and, yes, it can be done. A vote for 4 yes for the Union. Page 3. 7:43 a.m. from number 5 224-234-4261. Yes, you can. Yes, you can. Vote 6 Union, yes. With a picture of a Hispanic drawing of 7 the Rosie the Riveter painting. 8 HEARING OFFICER NEWMAN: So if you flip like -- 9 This is an example of -- You'll get a better shot of 10 it if you'll just flip to Page 4. 11 THE INTERPRETER: Okay. Page 4. This Halloween 12 don't forget that Raymundo's will surprise you with 13 their tricks. You deserve more treats in your bag. 14 Vote yes to the Union. I didn't read the date above. 15 That's Thursday, October 31, 10:26 a.m. Friday, 16 November 1, 2:08 p.m. Attention! Raymundo's and 17 your anti-Union Committee are disappointed and are 18 running around lying and laughing. Remember, 19 Raymundo's broke the law and lost all their 20 credibility. X. Page 5. Friday, November 1, 2:08 21 p.m. continuing. Don't believe it. You already know 22 they are lies and jokes. You're going to win and to 23 be able to negotiate a contract -- negotiate a fair 24 contract. The Union works for you. You deserve 25 more. Vote yes for the Union. Next page, Page 6.</p>

6 (Pages 164 to 167)

<p style="text-align: right;">Page 168</p> <p>1 Saturday, November 2, 12:45 p.m. with a picture of 2 Pinocchio. The truth is that Raymundo's is trying to 3 trick you so that you vote with fear and you accept 4 very little. Now that you know the truth, don't fall 5 in their new trap. Vote yes for the Union. Work 6 harder. You deserve more money. You deserve 7 respect. Vote yes for the Union and together we are 8 going to negotiate a fair contract. For more 9 information, contact Eduardo Victoria at 10 224-234-4261. Smiley face. Page 7, Sunday, 11 November 3, 2:53 p.m. Four pictures together. 12 Different racial depictions of Rosie the Riveter. We 13 can do it. Vote Union yes. Vote Union yes. Yes, 14 you can.</p> <p>15 In the dark bubble, don't be pulling my 16 leg with so many lies and messages. Because of that 17 I didn't greenish in the Union for stupid messages 18 that you had to send. Page 8.</p> <p>19 MR. TORRES: Sorry. I think -- As far as the 20 translation goes, I think there were two words that 21 were incorrectly translated.</p> <p>22 HEARING OFFICER NEWMAN: All right. Let's go 23 off the record for a second.</p> <p>24 (WHEREUPON, WE WERE OFF THE 25 RECORD.)</p>	<p style="text-align: right;">Page 170</p> <p>1 are bothering me. Stop bothering me. In the white 2 bubble. 1, dash. You will not receive anymore 3 messages or calls. The first message that we sent 4 you was on October 20th. You should have told us 5 immediately that you didn't want to receive messages. 6 2, dash. It's not true that we bother you all day. 7 That is an exaggeration. 3, dash. With respect to 8 the two-faced rat message, we have sent various -- 9 sent several months ago, it could be that you liked 10 it or not. That's your opinion, and that's valid, 11 and we respect it. Let us have a conversation here, 12 and I hope that in the future we will have a better 13 understanding. We wish the best.</p> <p>14 In the dark bubble.</p> <p>15 HEARING OFFICER NEWMAN: Dark bubble on what 16 page?</p> <p>17 THE INTERPRETER: On Page 9. We'll go to that 18 dark bubble on Page 10.</p> <p>19 HEARING OFFICER NEWMAN: Yes.</p> <p>20 THE INTERPRETER: And yesterday's messages and 21 all the messages from everyday I have.</p> <p>22 Light bubble. I ask that you please don't 23 send anymore messages or you will force me to file a 24 complaint with the police.</p> <p>25 Dark bubble. Well, I also have the</p>
<p style="text-align: right;">Page 169</p> <p>1 HEARING OFFICER NEWMAN: So back on the record. 2 We had gone off the record to discuss some 3 concerns about the translation of the darker colored 4 bubbles. It turns out there are, I believe, two 5 possible ways to translate this.</p> <p>6 And, Translator, if you would, give us 7 both.</p> <p>8 THE INTERPRETER: Both acceptable colloquial 9 translations, I believe. The darker bubble on Page 7 10 says, Don't pull our legs with so many bad messages, 11 or don't be -- don't be such a liar with sending us 12 so many fucking messages.</p> <p>13 Continue?</p> <p>14 HEARING OFFICER NEWMAN: Please.</p> <p>15 THE INTERPRETER: Page 8. What do you -- In the 16 lighter bubble. What do you think you're going to 17 get with your insults? Do you enjoy saying bad 18 words? If you think that we're going to get into a 19 game with you, you're wrong. You can try -- continue 20 trying. We will send your text messages to our legal 21 department. In the darker bubble. Well, stop 22 bothering me every day with these messages. You wake 23 me up with these messages, similarly, or with all of 24 the messages that you send me. Page 9, continuing in 25 the darker bubble. I work at night and all day you</p>	<p style="text-align: right;">Page 171</p> <p>1 messages. Read 11/3/19.</p> <p>2 HEARING OFFICER NEWMAN: Okay. Before we read 3 the text into the message -- Sorry -- the text into 4 the record, Employer it sounded like you had 5 completed your questioning. Is that still the case?</p> <p>6 MR. ANDREWS: That's still the case.</p> <p>7 HEARING OFFICER NEWMAN: Do you need a second or 8 are you ready.</p> <p>9 MR. TORRES: I'll need a couple minutes.</p> <p>10 HEARING OFFICER NEWMAN: Okay. Let's go off the 11 record.</p> <p>12 (WHEREUPON, WE WERE OFF THE 13 RECORD.)</p> <p>14 HEARING OFFICER NEWMAN: Back on the record. 15 Union.</p> <p>16 MR. TORRES: Good morning. My name is Joe 17 Torres. I'm the attorney for the Union.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. TORRES:</p> <p>20 Q. You said you worked third shift, correct?</p> <p>21 A. Yes.</p> <p>22 Q. What hours -- What hours do third shift 23 employees work?</p> <p>24 A. From 9:30 to 6:00 a.m.</p> <p>25 HEARING OFFICER NEWMAN: Do you mean -- Just to</p>

7 (Pages 168 to 171)

<p style="text-align: right;">Page 172</p> <p>1 clarify. It's obvious. But 9:30 p.m.?</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. TORRES:</p> <p>4 Q. Now, you mentioned -- You testified that</p> <p>5 you told employees about the text Eduardo sent you.</p> <p>6 But I'm a little confused on exactly who you told and</p> <p>7 what their last names are.</p> <p>8 Can you repeat for me who you told about</p> <p>9 Eduardo's text and their last names, if you remember</p> <p>10 the last names?</p> <p>11 A. Sandra Cartiyel (phonetic), Maria</p> <p>12 Hernandez, Maria Gomez, Maria de Jesus, Griselda,</p> <p>13 Jesus Valario (phonetic). Griselda's last name I</p> <p>14 think is Mota, but I don't know exactly. Something</p> <p>15 like that. Jesus. I just don't remember their last</p> <p>16 names very well. But there are like three Marias.</p> <p>17 Gerardo. Gerardo Mota. The name of this one --</p> <p>18 What's her name -- I don't remember -- Isabelle, but</p> <p>19 I don't remember their last names. I don't know</p> <p>20 their names.</p> <p>21 Q. Gerardo Mota, he's the general manager,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Now, I'd like to direct your attention to</p> <p>25 Employer Exhibit 1. Page 7.</p>	<p style="text-align: right;">Page 174</p> <p>1 they were going to send the police after me. They</p> <p>2 didn't have a reason to do this. They didn't have a</p> <p>3 reason to threaten me with that.</p> <p>4 Q. Okay. So where -- So the first time</p> <p>5 Eduardo said anything about the police was on</p> <p>6 Page 10, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that text was sent -- And Eduardo sent</p> <p>9 that text after you sent him the text that said</p> <p>10 pendejadas, correct?</p> <p>11 A. This word. Yeah, they were just sending</p> <p>12 me a ton of messages.</p> <p>13 Q. That's not what I'm asking.</p> <p>14 A. They were sending me a ton of messages,</p> <p>15 and I just deleted a lot of them. But they were just</p> <p>16 sending me so many messages.</p> <p>17 Q. Okay. So let me clarify this.</p> <p>18 The first time that Eduardo said anything</p> <p>19 about the police was on November 3rd, correct, and as</p> <p>20 shown on Page 10?</p> <p>21 A. Yes.</p> <p>22 Q. So before he said anything about the</p> <p>23 police, you sent a text message that said mamones and</p> <p>24 pendejadas, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 173</p> <p>1 Now, did you -- When you were talking to</p> <p>2 these other employees, did you tell them that you</p> <p>3 cursed at Eduardo first?</p> <p>4 A. Yes, I think I told some of them that.</p> <p>5 Q. Who did you tell?</p> <p>6 A. As I was sitting in the eating area with</p> <p>7 Ms. Griselda and Mr. Jesus, I said that I -- When I</p> <p>8 mentioned it to them, I said that they were sending</p> <p>9 me these messages, and they said that they were also</p> <p>10 receiving the same messages, the same bad messages</p> <p>11 and offensive messages and they said that maybe they</p> <p>12 were -- the Union was sending out a lot of messages</p> <p>13 and even uglier ones and more offensive ones, and I</p> <p>14 said why don't we say something about all these</p> <p>15 messages because the Union isn't really supposed to</p> <p>16 be sending out these kinds of messages, they're not</p> <p>17 supposed to do that.</p> <p>18 Q. So this conversation happened before you</p> <p>19 sent the text on November 3rd at 2:53 p.m.?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So who did -- So did you tell</p> <p>22 employees -- When you were talking about the police,</p> <p>23 did you tell employees that you first cursed --</p> <p>24 insulted Eduardo Victoria?</p> <p>25 A. No, because they had told me first that</p>	<p style="text-align: right;">Page 175</p> <p>1 Q. So when you were talking to your employees</p> <p>2 about the text that Eduardo sent you regarding the</p> <p>3 police, did you first tell them that you insulted</p> <p>4 Eduardo and cursed at him?</p> <p>5 MR. ANDREWS: Objection. I think he's trying to</p> <p>6 characterize testimony. We did not hear that that</p> <p>7 was one of the two possible translations.</p> <p>8 HEARING OFFICER NEWMAN: I'll sustain the</p> <p>9 objection based on the fact that it does appear that</p> <p>10 you're characterizing.</p> <p>11 MR. TORRES: That's fair.</p> <p>12 HEARING OFFICER NEWMAN: Reference your question</p> <p>13 in regard to specifically, I think, maybe the date</p> <p>14 and the time of the text.</p> <p>15 MR. TORRES: Okay.</p> <p>16 BY MR. TORRES:</p> <p>17 Q. When you were telling other employees</p> <p>18 about how Eduardo mentioned the police, did you also</p> <p>19 tell them that you used the words mamones and</p> <p>20 pendejadas when you texted him first?</p> <p>21 A. Yes.</p> <p>22 Q. You mentioned that?</p> <p>23 A. Yes.</p> <p>24 Q. And which employees did you tell?</p> <p>25 A. I told various people.</p>

8 (Pages 172 to 175)

<p style="text-align: right;">Page 176</p> <p>1 Q. Who?</p> <p>2 A. Almost all the people that were working on</p> <p>3 the line with me. The names that I told you.</p> <p>4 Q. Okay.</p> <p>5 A. Because I didn't know what to do because</p> <p>6 of the fear I felt that he was threatening me.</p> <p>7 Q. All right. So when you were talking</p> <p>8 about -- When you were telling these employees about</p> <p>9 the -- Eduardo's text regarding the police, did you</p> <p>10 tell them that Eduardo said that he would only call</p> <p>11 the police if you contacted him again?</p> <p>12 A. Yes.</p> <p>13 Q. And who did you tell?</p> <p>14 A. Almost all the people that sit to eat with</p> <p>15 me. Ms. Griselda and Mr. Jesus.</p> <p>16 Q. Who else?</p> <p>17 A. Those on the line that work with me. Two</p> <p>18 Marias work there on the line with me. Ms. Sandra.</p> <p>19 Almost all the people that I told you that work with</p> <p>20 me, and she -- they told me that they were also</p> <p>21 sending them purely offensive messages.</p> <p>22 Q. You testified that Eduardo insulted you,</p> <p>23 called you a rat or something along those lines,</p> <p>24 correct?</p> <p>25 A. Yes, two-faced rat.</p>	<p style="text-align: right;">Page 178</p> <p>1 In an off-the-record discussion, we talked</p> <p>2 about concerns regarding an individual that is</p> <p>3 sitting in the hearing room. I've clarified that at</p> <p>4 this point there's no clear suggestion that the</p> <p>5 individual will be called as a witness, so I'm going</p> <p>6 to allow the individual to stay. As far as the</p> <p>7 concerns regarding possible communication between the</p> <p>8 witness and folks or anyone in the hearing room who</p> <p>9 is not a party to this proceeding, I've reminded the</p> <p>10 witness -- I've gently reminded the witness to please</p> <p>11 just remain focused on the individuals who are</p> <p>12 participating in the hearing just so that we all feel</p> <p>13 more comfortable.</p> <p>14 And with that, I will give you the floor</p> <p>15 again.</p> <p>16 MR. TORRES: Nothing further.</p> <p>17 MR. ANDREWS: I believe there's a question</p> <p>18 pending.</p> <p>19 MR. TORRES: The question is withdrawn. Nothing</p> <p>20 further.</p> <p>21 MR. ANDREWS: We don't have anything further for</p> <p>22 the witness.</p> <p>23 EXAMINATION</p> <p>24 BY HEARING OFFICER NEWMAN:</p> <p>25 Q. I do have one thing I feel I need to</p>
<p style="text-align: right;">Page 177</p> <p>1 Q. Okay. Can you identify in Union -- I'm</p> <p>2 sorry -- Employer Exhibit 1 where he called you a</p> <p>3 two-legged rat?</p> <p>4 THE INTERPRETER: Interpreter correction.</p> <p>5 She said two-legged rat, not two-faced rat.</p> <p>6 BY MR. TORRES:</p> <p>7 Q. Can you identify in Employer Exhibit 1</p> <p>8 where Eduardo called you a two-legged rat?</p> <p>9 A. It's written here. Let me see where it</p> <p>10 is.</p> <p>11 MR. TORRES: I'm sorry. I just noticed that</p> <p>12 someone from HR was still in the room.</p> <p>13 MR. ANDREWS: We said she's not a witness.</p> <p>14 MR. TORRES: There's also maybe a possibility</p> <p>15 that these two are sharing some kind of non-oral</p> <p>16 signals.</p> <p>17 MR. ANDREWS: I object.</p> <p>18 HEARING OFFICER NEWMAN: What makes you think</p> <p>19 that that's the case?</p> <p>20 MR. TORRES: Can we speak --</p> <p>21 HEARING OFFICER NEWMAN: Let's go off the record</p> <p>22 for a second.</p> <p>23 (WHEREUPON, WE WERE OFF THE</p> <p>24 RECORD.)</p> <p>25 HEARING OFFICER NEWMAN: Back on the record.</p>	<p style="text-align: right;">Page 179</p> <p>1 clarify, and that is in regard to what you told other</p> <p>2 people about the conversation involving the reference</p> <p>3 to the police.</p> <p>4 A. Yes.</p> <p>5 Q. What did you tell the other employees that</p> <p>6 the Union said about the police?</p> <p>7 A. That they were just some people that were</p> <p>8 only playing with us.</p> <p>9 Q. Did you -- Strike that.</p> <p>10 Do you -- I believe you testified earlier</p> <p>11 that you told other employees that the Union referred</p> <p>12 to the police; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. What did you tell the other employees that</p> <p>15 the Union said about the police?</p> <p>16 A. That they were being very bad; that they</p> <p>17 were trying to scare us into voting for them; and</p> <p>18 that the more scared we would be, the more likely we</p> <p>19 would be to voting for them.</p> <p>20 Q. Okay. But what I still don't understand</p> <p>21 is if you told other employees that the Union said</p> <p>22 something about the police, what did you tell the</p> <p>23 other employees specifically about what the Union</p> <p>24 said about the police, the police specifically?</p> <p>25 A. That I was very afraid that the police</p>

<p style="text-align: right;">Page 180</p> <p>1 were going to come to my house. 2 Q. Did you give them the -- Did you give any 3 other employees a description of what the text 4 message said about the police? 5 A. Yes. 6 Q. And what did you tell them? 7 A. That what they were doing was very bad. 8 Q. Okay. So I'm not hearing you describe 9 that you gave any detail to other employees about 10 what exactly the Union said about the police. 11 Can you recall whether you gave any detail 12 about what you read in the text message -- in the 13 text message that talked about the police? 14 A. About the offensive messages that they 15 were sending me, and that when I said that bad word, 16 that that's when they said that they were going to 17 send the police to me. 18 Q. Did you tell the employees why the Union 19 said that they were going to send the police? 20 A. Because I had said that -- a swear word, 21 and because the messages that they had sent me were 22 offending me. 23 HEARING OFFICER NEWMAN: Let's go off the record 24 for a second. 25</p>	<p style="text-align: right;">Page 182</p> <p>1 the Union was telling you that they would call the 2 police, that it was connected to you contacting the 3 Union? 4 MR. ANDREWS: Objection. I think they contacted 5 her. She's responding. 6 HEARING OFFICER NEWMAN: Right. But isn't the 7 Union saying if you contact us again we will call the 8 police? 9 MR. ANDREWS: Right. But it's a text -- They 10 originated this texting chain. So I think we have to 11 put that into context. It's not like she out of the 12 blue contacted them. 13 HEARING OFFICER NEWMAN: Right. But -- Okay. 14 Let me rephrase. 15 BY HEARING OFFICER NEWMAN: 16 Q. When you told employees that the Union 17 mentioned the police, did you also tell the employees 18 that the reference to the police was in regard to a 19 request by the Union that you not contact the Union? 20 A. What? 21 Q. My understanding is that the Union asked 22 you in this text not to contact them anymore or that 23 they would call the police? 24 A. Yes. 25 Q. And when you talked to other employees,</p>
<p style="text-align: right;">Page 181</p> <p>1 (WHEREUPON, WE WERE OFF THE 2 RECORD.) 3 HEARING OFFICER NEWMAN: Back on the record. 4 So in an off-the-record discussion we 5 talked about my concerns about clarifying exactly 6 what the witness told other employees about the 7 police. Now, I believe we all agree that there's 8 only one text bubble here that specifically 9 references the police and that is on Page 10 of 10 Employer Exhibit 1. It's the last of the light 11 colored bubbles on Page 10. 12 And so, Translator, if you don't mind 13 again just reading that text. 14 THE INTERPRETER: The last light colored bubble 15 on Page 10 translates to the following. 16 I ask you to please not send me anymore 17 messages or I will be forced to file a complaint with 18 the police. 19 BY HEARING OFFICER NEWMAN: 20 Q. Okay. So question for the witness now. 21 My understanding of the text message that 22 you received was that the Union requested that you 23 not contact them, and that if you did, they would 24 contact the police. 25 Did you explain to the other employees why</p>	<p style="text-align: right;">Page 183</p> <p>1 did you just tell them that the Union talked about 2 the police or did you tell the other employees that 3 the Union claimed that they would contact the police 4 if you continued to contact them? 5 A. If I hadn't sent them that swear word and 6 that message, they would have continued sending me 7 more text messages. 8 MR. TORRES: She's refusing to answer at this 9 point. 10 BY THE WITNESS: 11 A. It wasn't just these messages that they 12 were sending me. They sent me a lot more. I just 13 deleted a lot of these messages. They sent it to me 14 on -- every day, Saturday and Sunday during the day, 15 and I work at night, so they wouldn't let me sleep. 16 MR. ANDREWS: I think the confusion may be 17 arising because taken by itself it sounds like she's 18 contacting the Union, but the Union has been 19 contacting her. 20 HEARING OFFICER NEWMAN: It is a bit of an odd 21 conversation. It's inherently kind of a strange 22 conversation that occurred, I'll admit, in that the 23 Union began the string of messages, but then the 24 message from the Union was that if you contact us, we 25 will contact the police. And I guess at this point</p>

10 (Pages 180 to 183)

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<p>1 I'll just say let the record show that I've asked 2 numerous times from the witness to clarify the amount 3 of detail that she provided to other employees about 4 why and how the subject of the police arose in the 5 first place. So I'm not going to continue asking 6 questions along this line, but, you know, I'm 7 obviously going to allow the parties to clarify the 8 issue because I feel it's still somewhat unresolved. 9 So if either side has any additional questions on 10 that subject. I forget where we're at. Are we 11 still -- You had finish. 12 MR. TORRES: I was finished. 13 MR. ANDREWS: We were finished too. 14 HEARING OFFICER NEWMAN: Are there any follow-up 15 questions from either side? 16 MR. TORRES: I need a moment, please. Can I 17 have a moment, please, to think about this. 18 HEARING OFFICER NEWMAN: Yeah. 19 Let's go off the record. 20 (WHEREUPON, WE WERE OFF THE 21 RECORD.) 22 HEARING OFFICER NEWMAN: Let's go back on the 23 record. 24 So in an off-the-record discussion, I 25 provided the translator the opportunity to help with</p>	<p>1 of threatening to call the police. A text message 2 isn't a threat. It's a conditional if you continue 3 to bother us, we may call the police. It's not 4 necessarily a threat. 5 HEARING OFFICER NEWMAN: I'm going to go ahead 6 and allow the line of questioning. I think actually 7 we're making some headway here. 8 MR. ANDREWS: Can you read -- I'm not sure if 9 I'll get it right. 10 (WHEREUPON, THE RECORD WAS READ 11 AS REQUESTED.) 12 BY THE WITNESS: 13 A. Yes. 14 BY MR. ANDREWS: 15 Q. How many of your coworkers did you say 16 that to? 17 A. More or less to the same people because I 18 don't really hang out with more than those people 19 that I mentioned earlier. 20 MR. ANDREWS: I have no further questions. 21 HEARING OFFICER NEWMAN: Union. 22 MR. TORRES: Yeah. 23 RECROSS-EXAMINATION 24 BY MR. TORRES: 25 Q. So you just testified that you told your</p>
Page 185	Page 187
<p>1 the witness to potentially clarify exactly what the 2 nature or the point of my questioning was, and I 3 think it's still a little unclear at this point 4 whether or not further questioning of this witness 5 along the lines of what was transmitted to other 6 employees in regard to the conversation about the 7 Union whether or not that will be an effective line 8 of questioning. 9 However, it's my understanding, Employer, 10 you have an additional question. 11 MR. ANDREWS: I have a few questions that I 12 think may get to it. 13 HEARING OFFICER NEWMAN: All right. Go ahead. 14 REDIRECT EXAMINATION 15 BY MR. ANDREWS: 16 Q. When you were -- When you were in the text 17 conversation with the Union, did you believe that the 18 Union threatened to call the police because you had 19 argued with the Union? 20 A. Yes. 21 Q. Did you tell any of your coworkers that 22 you were in an argument in text messages with the 23 Union when the Union threatened to call the police on 24 you? 25 MR. TORRES: Objection on the characterization</p>	<p>1 coworkers that you were in an argument with the Union 2 and that they threatened to call the police on you, 3 correct? 4 A. Yes. 5 Q. Did you also tell those coworkers that the 6 Union said it would only call the police on you if 7 you contacted them again? 8 A. Yes. 9 Q. How many employees did you tell that to? 10 A. Like ten. 11 Q. The same employees that you listed off 12 earlier? 13 A. Yes. 14 MR. TORRES: I've got nothing further. 15 MR. ANDREWS: Nothing further. Thanks. 16 HEARING OFFICER NEWMAN: Okay. Then the witness 17 is excused. Thank you very much. 18 Then consistent with our understanding 19 about sequestration, I'm going to go ahead and ask 20 the witness to please -- 21 MR. ANDREWS: She's actually leaving the 22 building right now. 23 HEARING OFFICER NEWMAN: Okay. 24 MR. ANDREWS: We'll just need a minute to 25 prepare for our next witness.</p>

11 (Pages 184 to 187)

<p style="text-align: right;">Page 188</p> <p>1 HEARING OFFICER NEWMAN: Why don't we take --</p> <p>2 Are you guys okay if we take 5 to 10?</p> <p>3 MR. ANDREWS: Oh, absolutely.</p> <p>4 MR. TORRES: Yeah.</p> <p>5 HEARING OFFICER NEWMAN: And then I think I know</p> <p>6 the answer here. But next witness Spanish as well?</p> <p>7 MR. ANDREWS: Yes.</p> <p>8 (WHEREUPON, WE WERE OFF THE</p> <p>9 RECORD.)</p> <p>10 HEARING OFFICER NEWMAN: Let's go back on the</p> <p>11 record.</p> <p>12 And Employer.</p> <p>13 MR. ANDREWS: All right. With respect to the</p> <p>14 same objection we've been discussing previously</p> <p>15 that's exhibit number -- Sorry -- Objection No. 2,</p> <p>16 the Employer now calls Sara Moran.</p> <p>17 HEARING OFFICER NEWMAN: Please remain standing</p> <p>18 and raise your right hand.</p> <p>19 THE WITNESS: Yes.</p> <p>20 (WHEREUPON, THE WITNESS WAS DULY</p> <p>21 SWORN.)</p> <p>22 HEARING OFFICER NEWMAN: Please be seated.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 190</p> <p>1 Q. What shift do you work on for Raymundo's?</p> <p>2 A. Second shift.</p> <p>3 Q. In August through October --</p> <p>4 HEARING OFFICER NEWMAN: Wait. Wait. Hold on.</p> <p>5 Sorry.</p> <p>6 Please clarify what hours second shift</p> <p>7 covers, like when does second shift start and when</p> <p>8 does it end.</p> <p>9 THE WITNESS: From 2:00 in the afternoon to</p> <p>10 10:30 at night.</p> <p>11 HEARING OFFICER NEWMAN: Okay. Thank you.</p> <p>12 BY MR. ANDREWS:</p> <p>13 Q. And from August to November, early</p> <p>14 November of this year, what job did you have at</p> <p>15 Raymundo's?</p> <p>16 A. Packer.</p> <p>17 Q. How many employees work on the packer line</p> <p>18 with you?</p> <p>19 A. Seven.</p> <p>20 Q. When you take a break, who else goes on</p> <p>21 break with you?</p> <p>22 A. Almost everyone who works second shift.</p> <p>23 Q. How many people is that?</p> <p>24 A. There are many of us. Maybe 20 or 30</p> <p>25 people.</p>
<p style="text-align: right;">Page 189</p> <p>1 PATTY GARVEY,</p> <p>2 called as an interpreter herein, was sworn to</p> <p>3 interpret all of the questions from English to</p> <p>4 Spanish and all of the answers from Spanish to</p> <p>5 English.</p> <p>6 SARA MORAN,</p> <p>7 called as a witness herein, having been first duly</p> <p>8 sworn, was examined and testified through the</p> <p>9 interpreter as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MR. ANDREWS:</p> <p>12 Q. State your name for the record, please.</p> <p>13 A. Sara Morano.</p> <p>14 THE WITNESS: Moran, M-O-R-A-N.</p> <p>15 HEARING OFFICER NEWMAN: And Employer.</p> <p>16 BY MR. ANDREWS:</p> <p>17 Q. Where do you work?</p> <p>18 A. Raymundo's.</p> <p>19 MR. ANDREWS: Just a clarification. She speaks</p> <p>20 English, but I think we'll go through the translator.</p> <p>21 BY THE WITNESS:</p> <p>22 A. At Raymundo's.</p> <p>23 BY MR. ANDREWS:</p> <p>24 Q. How long have you worked for Raymundo's?</p> <p>25 A. Five months.</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. In October of this year or November of</p> <p>2 this year, were you contacted by the Union?</p> <p>3 A. Yes.</p> <p>4 Q. How did you know it was the Union?</p> <p>5 A. Because the person who sent me the</p> <p>6 messages from the Union identified himself as Eduardo</p> <p>7 from the Union.</p> <p>8 MR. TORRES: Objection. Hearsay. Referencing</p> <p>9 documents not in evidence.</p> <p>10 MR. ANDREWS: There's no references to</p> <p>11 documents.</p> <p>12 MR. TORRES: She said text messages or messages.</p> <p>13 BY MR. ANDREWS:</p> <p>14 Q. Did you receive any telephone calls</p> <p>15 from --</p> <p>16 HEARING OFFICER NEWMAN: Wait. Hold on. Let me</p> <p>17 just clarify here.</p> <p>18 I will sustain your objection at this</p> <p>19 point. But what I'll do as well is obviously provide</p> <p>20 the Employer the opportunity to lay a foundation and</p> <p>21 explain what specifically we're talking about in</p> <p>22 terms of communications.</p> <p>23 MR. ANDREWS: Sure.</p> <p>24 BY MR. ANDREWS:</p> <p>25 Q. How did the Union communicate with you?</p>

12 (Pages 188 to 191)

<p style="text-align: right;">Page 192</p> <p>1 A. Through calls and texts.</p> <p>2 Q. And when you received a call, how did you</p> <p>3 know it was the Union?</p> <p>4 A. Well, the person that called me identified</p> <p>5 themselves, and they said that they worked for the</p> <p>6 Union -- or that they represented the Union.</p> <p>7 Q. Was the -- Was there a phone number?</p> <p>8 A. Yes.</p> <p>9 Q. And what was that phone number?</p> <p>10 A. I don't know the number by memory, but I</p> <p>11 have it in my phone, the records in my phone, and</p> <p>12 it's the same number that was sending me the</p> <p>13 messages, and that -- that number identified -- the</p> <p>14 texter identified himself as Eduardo Victoria.</p> <p>15 Q. Can you --</p> <p>16 MR. TORRES: I just want to reiterate my hearsay</p> <p>17 objection regarding texts or documents not in</p> <p>18 evidence.</p> <p>19 MR. ANDREWS: I'm only asking how she knew or</p> <p>20 thought she knew it was someone from the Union. I'm</p> <p>21 not asking about what any text said. I just want to</p> <p>22 know how did you know it was from the Union.</p> <p>23 HEARING OFFICER NEWMAN: I'll overrule the</p> <p>24 objection, and I will let the record speak for itself</p> <p>25 as to the extent to which I can draw a connection</p>	<p style="text-align: right;">Page 194</p> <p>1 A. Yes. There were two sisters there from</p> <p>2 the church in the bathroom.</p> <p>3 Q. And when this person who identified</p> <p>4 himself as -- Well let me ask you this.</p> <p>5 Did he identify himself as Eduardo?</p> <p>6 A. If I remember correctly, yes.</p> <p>7 Q. And what did you say to Eduardo and what</p> <p>8 did Eduardo say to you?</p> <p>9 A. He said that he was representing the</p> <p>10 Union, and that they were making calls before the</p> <p>11 elections, and he asked that we support them and vote</p> <p>12 yes.</p> <p>13 Q. Did your conversation include anything</p> <p>14 else?</p> <p>15 A. Yes. When he said -- When he called</p> <p>16 and -- When we started having a conversation, he</p> <p>17 started asking me things, and he said that we should</p> <p>18 vote for the Union because we should not permit a</p> <p>19 company -- the company to represent our -- represent</p> <p>20 us -- we should not let the company represent us</p> <p>21 because we're immigrants, and so we should let the</p> <p>22 Union represent us so we don't lose work, and that</p> <p>23 the company would call immigration on us. He said</p> <p>24 don't worry about me, I'm a citizen, but that the</p> <p>25 company should not be representing immigrants.</p>
<p style="text-align: right;">Page 193</p> <p>1 that she was referring to Eduardo.</p> <p>2 MR. ANDREWS: Okay.</p> <p>3 BY MR. ANDREWS:</p> <p>4 Q. You referenced a moment ago in your</p> <p>5 testimony that you had a telephone call with someone</p> <p>6 you thought was Eduardo.</p> <p>7 What made you think it was Eduardo?</p> <p>8 A. Because I remember that that Sunday that</p> <p>9 he called me -- And I remember it was a Sunday</p> <p>10 because I was at church. That Sunday that he called</p> <p>11 me he said that his name was Eduardo.</p> <p>12 Q. So you're at church and it's a Sunday.</p> <p>13 What's the date?</p> <p>14 A. It was the Sunday -- It was two or three</p> <p>15 days before the voting. So it would be the 4th.</p> <p>16 Q. And you were at church; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And did your phone ring?</p> <p>19 A. We were in the Dominican church and there</p> <p>20 was a break until something -- another event happened</p> <p>21 and so I -- that's when I received the call, and I</p> <p>22 left and I went to the bathroom and answered the</p> <p>23 call.</p> <p>24 Q. Was anyone else present when you were</p> <p>25 speaking on the phone?</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. Was there anything else that was said</p> <p>2 between you and Eduardo in that telephone</p> <p>3 conversation at your church?</p> <p>4 A. I told him that I had to hang up because I</p> <p>5 had to start my service, and I hung up on him.</p> <p>6 Q. Did you share that conversation with any</p> <p>7 of your coworkers at Raymundo's after that Sunday?</p> <p>8 A. Yes. Yes, on Monday when I went back to</p> <p>9 work, I talked with a lot of people.</p> <p>10 Q. And what did you say to other Raymundo's</p> <p>11 employees about this conversation?</p> <p>12 A. I told people at the company that he had</p> <p>13 called me on Sunday and that he was talking about</p> <p>14 immigration, and that he -- in a certain way he was</p> <p>15 threatening me and intimidating me. And I had</p> <p>16 mentioned to my colleagues that if the Union were to</p> <p>17 come in, what would happened to us? And I talked to</p> <p>18 one woman who said -- and I asked her what's going to</p> <p>19 happen, and she said to me twice, I'm afraid, I'm</p> <p>20 afraid if they come in, and I think that immigration</p> <p>21 is bad for us and -- I also asked if -- asked two of</p> <p>22 these other women if they had gotten messages. Oh,</p> <p>23 we talked about it during break, and I asked two</p> <p>24 other women if they had gotten these type of</p> <p>25 offensive messages, and they said yes.</p>

13 (Pages 192 to 195)

<p style="text-align: right;">Page 196</p> <p>1 MR. TORRES: Objection, hearsay.</p> <p>2 HEARING OFFICER NEWMAN: Employer, what are your</p> <p>3 thoughts on the objection?</p> <p>4 MR. ANDREWS: We don't have a foundation as to</p> <p>5 those other conversations. So, yeah, I understand</p> <p>6 that it may well be, but it's also a party admission</p> <p>7 if we can establish that it came from the Union.</p> <p>8 HEARING OFFICER NEWMAN: Well, he's objecting on</p> <p>9 hearsay grounds about what the employee said,</p> <p>10 correct?</p> <p>11 MR. TORRES: About what the employee said,</p> <p>12 correct.</p> <p>13 HEARING OFFICER NEWMAN: So I will sustain that.</p> <p>14 BY MR. ANDREWS:</p> <p>15 Q. How many people did you discuss your</p> <p>16 Sunday conversation with at Raymundo's?</p> <p>17 A. I talked to many people. I mean, I talked</p> <p>18 to everyone on my line, and there were seven of us on</p> <p>19 my line, and I talked to Rocio who was on line 1. I</p> <p>20 talked to another guy who worked on line 2. I talked</p> <p>21 to different people from different lines. Remember</p> <p>22 we're a big group of people. There are 20 of us and</p> <p>23 sometimes we get up to 30 especially when there's a</p> <p>24 break and there's a shift change and we are all</p> <p>25 together.</p>	<p style="text-align: right;">Page 198</p> <p>1 MR. TORRES: I need a minute.</p> <p>2 HEARING OFFICER NEWMAN: Let's go off the</p> <p>3 record.</p> <p>4 (WHEREUPON, WE WERE OFF THE</p> <p>5 RECORD.)</p> <p>6 HEARING OFFICER NEWMAN: Back on the record.</p> <p>7 So Union.</p> <p>8 MR. TORRES: The Union does not have any</p> <p>9 questions for this witness.</p> <p>10 MR. ANDREWS: I just have one clarifying</p> <p>11 question.</p> <p>12 HEARING OFFICER NEWMAN: Okay.</p> <p>13 BY MR. ANDREWS:</p> <p>14 Q. When in the conversation on Sunday with</p> <p>15 Eduardo -- Let me say it this way. Sorry.</p> <p>16 What preceded the comment about</p> <p>17 immigration during your conversation with Eduardo on</p> <p>18 Sunday?</p> <p>19 A. What happened when he spoke of immigrants,</p> <p>20 I felt offended. I felt threatened in a certain way</p> <p>21 in the way that he said it.</p> <p>22 Q. I'm sorry. That wasn't really my</p> <p>23 question.</p> <p>24 My question was what happened between you</p> <p>25 and Eduardo in this conversation or in other</p>
<p style="text-align: right;">Page 197</p> <p>1 Q. Did any other employees indicate to you</p> <p>2 that they were afraid based on --</p> <p>3 MR. TORRES: Objection, hearsay.</p> <p>4 HEARING OFFICER NEWMAN: I'm -- Let me hear his</p> <p>5 question first.</p> <p>6 MR. TORRES: Sure. I was premature.</p> <p>7 BY MR. ANDREWS:</p> <p>8 Q. So you just testified that you had</p> <p>9 conversations with other employees.</p> <p>10 Can you give me some of the names of some</p> <p>11 of the other employees?</p> <p>12 A. I spoke with John. With Ms. Lupita. I</p> <p>13 don't know her last name. With a guy whose name is</p> <p>14 Rashad. With Mrs. Rocio. With Aricela. With some</p> <p>15 other young women. I talked to Mrs. Maria Jose. To</p> <p>16 Rosa. I talked a lot with Rosa, and she doesn't work</p> <p>17 at the company anymore. She just recently retired</p> <p>18 and went back to her own country. I don't remember</p> <p>19 everyone's names.</p> <p>20 Q. Did the employees that you worked with</p> <p>21 wear name tags?</p> <p>22 A. No, we don't use them.</p> <p>23 Q. And how long have you worked there?</p> <p>24 A. Five months.</p> <p>25 MR. ANDREWS: I don't have anymore questions.</p>	<p style="text-align: right;">Page 199</p> <p>1 conversations prior to the reference to immigrants?</p> <p>2 A. Yes, because on Saturday, the day before,</p> <p>3 he also called.</p> <p>4 Q. And what took place on that Saturday</p> <p>5 telephone call?</p> <p>6 A. There we were discussing things in a very</p> <p>7 strong tone. Also talking about what they could do</p> <p>8 for me, the benefits. The question is here is this</p> <p>9 person who was calling me constantly, continued with</p> <p>10 this continuous tone to try to convince me. I</p> <p>11 felt, apart from all those ugly messages, that for me</p> <p>12 they were offensive messages, saying things like you</p> <p>13 two-legged rat and things like that. In the</p> <p>14 conversation on Saturday I said with Eduardo, we</p> <p>15 arrived at a point where I had -- you know, it was</p> <p>16 always the same thing, that he was telling me about</p> <p>17 the benefits that they could do for me, and we</p> <p>18 arrived at a point where I had to tell him just leave</p> <p>19 me in peace. The interpreter said let me translate,</p> <p>20 please, and she said, sorry, I'm just trying to</p> <p>21 remember. I'm not going to remember exactly what was</p> <p>22 said, but I'm just trying to remember.</p> <p>23 MR. TORRES: The Union is going to object on</p> <p>24 hearsay of referencing ugly messages or documents or</p> <p>25 text messages that aren't in evidence.</p>

14 (Pages 196 to 199)

<p style="text-align: right;">Page 200</p> <p>1 HEARING OFFICER NEWMAN: I understand your 2 objection, and I think the best way to respond to it 3 is just to say that I'll afford the proper weight to 4 evidence that's not really substantiated. 5 MR. TORRES: Okay. 6 MR. ANDREWS: Ask the witness to focus on the 7 telephone conversation on Saturday and what she said 8 to the Union. 9 BY THE WITNESS: 10 A. When they called me when we were 11 chatting -- The way that he told me that he -- 12 constantly said that if we didn't vote for them, for 13 the Union at Raymundo's, we're going to -- always 14 this issue of immigrants. 15 BY MR. ANDREWS: 16 Q. My question is what did this witness say 17 to the person on the other end of the telephone line 18 in the telephone conversation? 19 A. That I'm not going to be afraid. That I 20 don't have a reason to vote for them so that they 21 represent me. I didn't feel like I needed him to 22 represent me because -- I needed the Union to 23 represent me because I can speak up for myself. 24 Thanks be to God, I have all of my documents in 25 place. But I did feel fear for the others, for my</p>	<p style="text-align: right;">Page 202</p> <p>1 conversations? 2 A. The -- He mentioned this issue completely 3 on Sunday. But the conversation on Saturday had more 4 to do with rules and benefits and things that the 5 Union could do for us. But he did mention something 6 about -- He did mention the word immigrants on 7 Saturday. But the stronger reference was on Sunday. 8 Q. Okay. And one more time just so we're 9 clear. 10 Please tell me what Eduardo -- what your 11 recollection is of the conversation with Eduardo 12 about immigration during the Sunday conversation? 13 A. I answered, and he said that because we 14 are immigrants, we should or we need to vote for 15 them. That I felt threatened because he had said 16 that because we were immigrants, that they would call 17 immigration on us. So that's why I felt threatened 18 by that. 19 Q. Who would call immigration? 20 A. According to what I understood, I thought 21 that the Union would call immigration or that 22 Raymundo's would call immigration on us. Because if 23 we didn't vote for them to represent us, that 24 Raymundo's would call immigration on those of us who 25 were immigrants. He said not to worry about him</p>
<p style="text-align: right;">Page 201</p> <p>1 colleagues, because he used that word. He was 2 calling us immigrants, and that felt strong, and I 3 had to tell him to, please, leave us alone. 4 MR. ANDREWS: I have no further questions. 5 MR. TORRES: I have nothing. 6 EXAMINATION 7 BY HEARING OFFICER NEWMAN: 8 Q. I do want to clarify. 9 It sounds like the topic of immigration 10 came up during these conversations; is that correct? 11 A. Yes, because he started talking about 12 immigrants, and that's what immigrants are. 13 Q. Okay. But what I need to understand is 14 that -- if you could walk me through each time the 15 subject of immigration came up, please tell me what 16 was said about that subject? 17 A. That every -- If we didn't vote for the 18 Union -- If we voted no for the Union -- for the 19 Union to represent us, that Raymundo's was going to 20 call because a lot -- many of us were immigrants, 21 that Raymundo's was going to call immigration on us. 22 Q. How many times was that said that you 23 recall? And also I understand you had two 24 conversations, a Saturday and a Sunday conversation. 25 Was it during the Saturday, the Sunday, or both</p>	<p style="text-align: right;">Page 203</p> <p>1 because he's a citizen. He said don't worry about 2 me, I'm a citizen, I'm going to be fine. But the 3 others. 4 THE INTERPRETER: Interpreter correction. 5 I said don't worry about me because I'm a 6 citizen. 7 HEARING OFFICER NEWMAN: And I want to clarify 8 something else here. 9 HEARING OFFICER NEWMAN: 10 Q. Who did you hear Eduardo say was going to 11 call -- potentially call immigration? 12 A. What did I understand? 13 Q. Yeah -- No. Maybe I misunderstood. I 14 thought I heard her -- I thought I heard you testify 15 that you heard Eduardo say that the Union was going 16 to call immigration. Was that accurate or not 17 accurate? 18 A. That's correct. 19 Q. Please tell me exactly what he said on 20 those -- on that point? 21 A. I cannot say exactly what was said. I am 22 not a machine to record conversations. But I can 23 tell you that he told me that we are immigrants, and 24 it was the way that he said it made me think that if 25 we didn't vote for them that things would end up --</p>

<p style="text-align: right;">Page 204</p> <p>1 that the end result would be that immigration would 2 be called. I don't know what this man exactly wants 3 me to say, but I know that he -- that I thought that 4 immigration was going to be called. 5 MR. ANDREWS: No questions. 6 CROSS-EXAMINATION 7 BY MR. TORRES: 8 Q. I understand you're not a machine, and 9 this conversation was a few weeks ago, but I'm still 10 a little confused, you know, based -- confused on 11 what you felt he was saying versus what he actually 12 said. 13 So to the best of your recollection, not 14 what you felt like he was saying, but what he 15 actually said to you? What did Eduardo actually say 16 to you? 17 A. He said that we, because we were 18 immigrants -- I'm trying to understand what you told 19 me in English to try to be able to answer it. You 20 told me to say what he told me, not what he -- I felt 21 he told me. 22 HEARING OFFICER NEWMAN: Okay. Let me stop this 23 right now. Line of questioning. 24 Okay. Just to direct to the witness 25 because we are using a translator, please do not</p>	<p style="text-align: right;">Page 206</p> <p>1 said regarding immigration? 2 A. Eduardo told me, or the person who said 3 they were Eduardo, referring to immigration, he said 4 that if you don't vote for us or for the Union -- And 5 excuse me, I'm still confusing a little bit the 6 English and the Spanish. He said that because we are 7 immigrants, we should vote for them, because if we 8 didn't vote for them, we could be deported or we 9 could -- immigration could have been called on us. 10 HEARING OFFICER NEWMAN: Did he say who was 11 going to call immigration? 12 THE WITNESS: I understood that he was saying 13 that if we voted no for the Union, that they would be 14 the ones that called immigration. 15 HEARING OFFICER NEWMAN: Okay. Did Eduardo 16 actually say the words that the Union would call 17 immigration or, again, was that just your 18 understanding? Did he actually say those words? 19 THE WITNESS: That's what I understood. 20 HEARING OFFICER NEWMAN: Okay. But my question 21 is, did you actually hear him say the words that the 22 Union was going to call immigration? 23 THE WITNESS: Not those words exactly. I don't 24 think he was ever going to say I'm going to call 25 immigration on you. But he said it in another way,</p>
<p style="text-align: right;">Page 205</p> <p>1 listen to the questions in English, but listen to the 2 question as it's posed to you in Spanish. 3 Now with that said -- I mean, I feel like 4 her testimony might have been -- or it sounds like it 5 was -- in response to her listening to you in 6 English. 7 MR. TORRES: Yes. 8 HEARING OFFICER NEWMAN: So what we need to do 9 is start afresh. And I apologize. 10 MR. TORRES: Yes. 11 BY MR. TORRES: 12 Q. My question to you is not what she felt 13 like Eduardo said. 14 HEARING OFFICER NEWMAN: No. No. Hold on. 15 Don't pose your question -- You're communicating to 16 her, to the witness, through the translator. 17 MR. TORRES: Got it. 18 HEARING OFFICER NEWMAN: So if you want to start 19 over. 20 BY MR. TORRES: 21 Q. So my question is, again, not what you 22 thought Eduardo said or how you interpreted what he 23 was saying. 24 My question is what do you remember, to 25 the best of your recollection, that Eduardo actually</p>	<p style="text-align: right;">Page 207</p> <p>1 using other words. 2 HEARING OFFICER NEWMAN: Using what words? 3 THE WITNESS: Always saying the word immigrants, 4 and because we're immigrants. What does that mean? 5 HEARING OFFICER NEWMAN: Was there anything else 6 that was said that led you to think the Union was 7 making claims about immigration besides the fact that 8 he just referred to the fact -- referred to 9 immigrants, or was it just that that made you feel 10 like that's what was being discussed? 11 THE WITNESS: Not that I can remember. No 12 exactly how you want me to say it, no. Like I'm 13 going to call on you. No. 14 MR. TORRES: I have nothing else. 15 MR. ANDREWS: Nothing further. 16 HEARING OFFICER NEWMAN: I have one follow-up. 17 FURTHER EXAMINATION 18 BY HEARING OFFICER NEWMAN: 19 Q. I know we addressed this before, but I 20 just want to clarify one more time how many people 21 were there that you talked to about the fact that you 22 were discussing immigration with Eduardo? 23 A. At least 11 people. I talked to the 7 24 people, as you know, on my line, and then I talked to 25 Rocio and Rashad and then also Maricella who's on</p>

<p style="text-align: right;">Page 208</p> <p>1 line 4, and then also additional people who I talked 2 to that I don't remember their names. 3 HEARING OFFICER NEWMAN: Anything further? 4 MR. ANDREWS: No. 5 RECROSS-EXAMINATION 6 BY MR. TORRES: 7 Q. Who are the 7 people on your line? 8 MR. ANDREWS: That's been asked and answered 9 numerous times. I object. 10 MR. TORRES: I don't think it's been very clear 11 in the record. Before when she listed names she 12 generally listed off numerous names. I'm just trying 13 to clarify if she remembers -- You know, and it will 14 go to her credibility -- you know, if these names 15 were on her line or if she just generally listed off, 16 you know, a clump of names. I think it's relevant to 17 her memory if she remembers -- you know, and for my 18 argument, our briefs, to identify who she told. 19 HEARING OFFICER NEWMAN: I'll allow it. Okay. 20 So, again, what exactly are you asking her to answer? 21 MR. TORRES: She said she, you know, told at 22 least 11 people, and then she said the 7 on her line, 23 and then she listed, you know, maybe another 3 other 24 names here. So I want to know who the other 7 people 25 that she told --</p>	<p style="text-align: right;">Page 210</p> <p>1 BY THE WITNESS: 2 A. My colleagues are permanent. 3 BY MR. TORRES: 4 Q. How do you know that? 5 A. We work at 2:00 in the afternoon. 6 MR. TORRES: Nothing further. 7 MR. ANDREWS: Nothing further. 8 HEARING OFFICER NEWMAN: Okay. Then the witness 9 is excused. 10 If you don't mind instructing the witness 11 on the sequestration. 12 THE INTERPRETER: You're going to have to tell 13 me what to tell her. 14 HEARING OFFICER NEWMAN: Just that the witness 15 needs to depart the room. 16 THE INTERPRETER: Okay. 17 MR. ANDREWS: We'll need just a short break to 18 use the restroom and to get ready. 19 HEARING OFFICER NEWMAN: Okay. Let's go off the 20 record. 21 (WHEREUPON, WE WERE OFF THE 22 RECORD.) 23 HEARING OFFICER NEWMAN: Back on the record. 24 The parties are just returning from a 25 break for lunch. And having returned, I understand,</p>
<p style="text-align: right;">Page 209</p> <p>1 HEARING OFFICER NEWMAN: Specifically on her 2 line? 3 MR. TORRES: Specifically on her line. 4 BY THE WITNESS: 5 A. The names are -- The operator is Elveno 6 (phonetic). Ms. Lupita. Maria. We call her Mari, 7 but I think she's Maria. The thing is there's a lot 8 of Marias. In my line there's three Marias. Rosa. 9 Rosa who was working as a packer, but then she moved 10 to -- they moved her over to line 7. John. John who 11 also worked in the same line as us. What's the other 12 lady? I don't remember her name exactly. Her name 13 is Carmen. I think that's her name. Oh, goodness 14 me, I don't remember. I don't know all the names 15 exactly of those 11 people. Maricella. There's 16 another one. Yes. 17 Q. Do you know of these 11 people how many 18 are full-time versus part-time employees? I'm sorry. 19 Strike that. 20 Do you know how many of these employees 21 are regular employees versus temporary employees? 22 HEARING OFFICER NEWMAN: Wait. You have to let 23 the translator ask the question. All right. So -- 24 THE INTERPRETER: I remember the question. 25 HEARING OFFICER NEWMAN: Okay.</p>	<p style="text-align: right;">Page 211</p> <p>1 Employer, you have another witness? 2 MR. ANDREWS: Yes, that's correct. 3 HEARING OFFICER NEWMAN: Who do you -- 4 MR. ANDREWS: Maria Zorrilla is our next 5 witness, and she will speak to issues related to 6 Objection No. 1. 7 HEARING OFFICER NEWMAN: Please remain standing 8 and raise your right hand. 9 THE WITNESS: Yes. 10 (WHEREUPON, THE WITNESS WAS DULY 11 SWORN.) 12 HEARING OFFICER NEWMAN: Please be seated. 13 PATTY GARVEY, 14 called as an interpreter herein, was sworn to 15 interpret all of the questions from English to 16 Spanish and all of the answers from Spanish to 17 English. 18 MARIA ZORRILLA, 19 called as a witness herein, having been first duly 20 sworn, was examined and testified through the 21 interpreter as follows: 22 DIRECT EXAMINATION 23 BY MR. ANDREWS: 24 Q. Good afternoon, Maria. 25 A. Good afternoon.</p>

17 (Pages 208 to 211)

<p style="text-align: right;">Page 212</p> <p>1 Q. Who do you work for?</p> <p>2 A. For Raymundo's Food.</p> <p>3 Q. How long have you worked for Raymundo's</p> <p>4 Food?</p> <p>5 A. For four years.</p> <p>6 Q. What shift do you work on?</p> <p>7 A. First shift.</p> <p>8 Q. And what are the hours of first shift?</p> <p>9 A. Eight hours.</p> <p>10 Q. When does it start and when does it end?</p> <p>11 A. From 6:00 in the morning until 2:30 in the</p> <p>12 afternoon.</p> <p>13 MS. REPORTER: Did we spell her name on the</p> <p>14 record?</p> <p>15 HEARING OFFICER NEWMAN: Sorry. We did not.</p> <p>16 BY MR. ANDREWS:</p> <p>17 Q. Could you state and spell your name for</p> <p>18 the record.</p> <p>19 A. Maria Zorrilla. M-A-R-I-A,</p> <p>20 Z-O-R-R-I-L-L-A.</p> <p>21 Q. And what's your job on the first shift?</p> <p>22 A. Operator.</p> <p>23 Q. Where do you park your car when you come</p> <p>24 to work?</p> <p>25 A. In the parking lot that's by the trash.</p>	<p style="text-align: right;">Page 214</p> <p>1 in and I was shaking because it was like an assault,</p> <p>2 an intimidation.</p> <p>3 Q. Who did you think those people in the</p> <p>4 parking lot were?</p> <p>5 A. I didn't open the window or anything</p> <p>6 because they surprised me. But then when I saw that</p> <p>7 they left, when they followed me, I saw that they</p> <p>8 were people from the Union giving out some papers.</p> <p>9 But I got so angry. I was assaulted and intimidated</p> <p>10 by them.</p> <p>11 Q. Were the people who were handing out</p> <p>12 papers the people who followed you to the door?</p> <p>13 MR. TORRES: Just object on leading.</p> <p>14 HEARING OFFICER NEWMAN: In what way?</p> <p>15 MR. TORRES: Insinuating -- Strike that. Strike</p> <p>16 that.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Yes, they were the people that were</p> <p>19 handing out paperwork from the parking lot all the</p> <p>20 way to the door.</p> <p>21 BY MR. ANDREWS:</p> <p>22 Q. How close were the people who followed you</p> <p>23 when you were walking?</p> <p>24 A. Close, close, close, close. That's not</p> <p>25 okay. That's not okay. That's an assault. If</p>
<p style="text-align: right;">Page 213</p> <p>1 Q. And what time of day do you arrive to park</p> <p>2 your car there to go to work?</p> <p>3 A. At 5:00 or 5:15 more or less.</p> <p>4 Q. In October of this year, was there an</p> <p>5 incident in the parking lot that you were involved</p> <p>6 in?</p> <p>7 A. I arrived to park. Two big men arrived.</p> <p>8 Fat. And I was surprised. I didn't want to open the</p> <p>9 door, and they knocked on my window. I didn't want</p> <p>10 to get out. I waited for them to leave. When I got</p> <p>11 out of my truck, they followed me. They gave me some</p> <p>12 papers. I told them that I didn't want them. Thank</p> <p>13 you. One man called me ignorant. You are -- You</p> <p>14 continue earning \$11 an hour, and you're going to die</p> <p>15 from hunger. I was very angry, and I was going to</p> <p>16 call the police, but the manager found me at the</p> <p>17 door. They were also there insulting him, and I --</p> <p>18 when I came in, I said -- they said -- We said we</p> <p>19 were going to start to call the police, and I didn't</p> <p>20 want to get involved in more problems. There was a</p> <p>21 daily meeting at 6:00 in the morning because we're 60</p> <p>22 people, more or less. I told them what had happened</p> <p>23 in the parking lot. Many people were surprised --</p> <p>24 And many people were intimidated because I was -- I</p> <p>25 came in and I was so scared because I was -- I came</p>	<p style="text-align: right;">Page 215</p> <p>1 someone doesn't want that, then why do they have to</p> <p>2 be so close to you. In those days I was so anxious,</p> <p>3 I was so nervous, and I had to arrive early to park</p> <p>4 and everything.</p> <p>5 Q. Did you tell the people who were following</p> <p>6 you to get away from you?</p> <p>7 A. I told them that I didn't want that, to</p> <p>8 stop giving it to me, none of it interested me.</p> <p>9 Q. When you went -- Pardon me.</p> <p>10 Did you see any of your coworkers when you</p> <p>11 went inside?</p> <p>12 A. Any who?</p> <p>13 Q. Coworkers? Other people that worked</p> <p>14 there?</p> <p>15 A. Yes, there were some. There were two men</p> <p>16 and a woman.</p> <p>17 Q. Did you see anybody else when you went</p> <p>18 inside?</p> <p>19 A. Yeah, the manager was coming in when I</p> <p>20 came in.</p> <p>21 Q. Did you tell anybody --</p> <p>22 A. And I explained to her.</p> <p>23 Q. Did -- How many people, if any, did you</p> <p>24 tell about what happened in the parking lot?</p> <p>25 A. I told everyone in the meeting in the</p>

18 (Pages 212 to 215)

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<p style="text-align: right;">Page 216</p> <p>1 morning at 6 a.m. there's 60 people there. Every day 2 we have meetings. 3 HEARING OFFICER NEWMAN: And what did you tell 4 them? 5 THE WITNESS: I told them what had happened to 6 me. I told them that they called me ignorant. I 7 told them they told me I was going to die. I told 8 them that they called me ignorant. They said I was 9 going to die from hunger. I felt assaulted. I told 10 all of that in the meeting. Some women said, oh, my 11 God, we can't believe what just happened to you. 12 BY MR. ANDREWS: 13 Q. And on what day was this compared to when 14 the election was? 15 A. It was the same week -- The election was 16 going to happen on the 6th, and it was the Monday 17 before. 18 Q. By Monday before, you mean the 4th of 19 November? 20 A. Yes. Yes. It was that same week. 21 MR. ANDREWS: I have no further questions for 22 this witness. 23 CROSS-EXAMINATION 24 BY MR. TORRES: 25 Q. Where is the parking lot in relation to</p>	<p style="text-align: right;">Page 218</p> <p>1 from hunger. 2 Q. Did any of these two individuals 3 physically touch you? 4 A. No. They just gave me the paper. 5 Q. Did any of them say that they were going 6 to hurt you? 7 A. No. They never threatened to hurt me, but 8 they -- but with what they did, it worked well enough 9 because then I had to live in fear because I was 10 expecting something to happen every time I arrived to 11 work. 12 Q. What they did was hand you a piece of 13 paper, correct? 14 A. Yes. 15 Q. These are tall -- You called them fat. 16 These are tall big guys, right? 17 A. And I'm so little. I was more -- even 18 more afraid. I was intimidated. I felt threatened. 19 Q. Did any of them make any intimidating 20 gesture? Did they shake their fist at you? Did they 21 do any gesture that said they were going to 22 physically hurt you besides stand near you? 23 A. When one of them told me I was going to 24 die from hunger, he threw the paper away like in a 25 way like this (indicating).</p>
<p style="text-align: right;">Page 217</p> <p>1 the entrance -- Well, first of all, strike that. 2 My name is Joe Torres, the attorney for 3 the Union. I just have a couple questions for you 4 this afternoon. 5 Where is the parking lot in relation to 6 the entrance to the -- to Raymundo's? 7 A. Well, there's one in front of the 8 building, and then there's one in the back, and I 9 park at the one in the back. It was dark. 10 Q. It was in the morning? 11 A. Yes. 12 Q. And you said it was two men who -- They 13 knocked on your window, on your car window? 14 A. The window, yes. I got really nervous 15 because I didn't know who they were. 16 Q. That's fair. 17 Now, what did they try to give you? 18 A. They -- I don't know what they -- what was 19 on the paper that they tried to give me. But when I 20 left -- When I got out of my car, they managed to get 21 close to me, and they gave me a paper, and I said I 22 don't want anything from you, whatever is on that 23 paper, I don't want it, and that's when they started 24 to call me ignorant. They told me I was stupid for 25 only earning \$11 an hour, and that I was going to die</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. He seemed frustrated, right? 2 A. Yes. 3 Q. Where did -- Where did -- In relation from 4 your car to the -- to the Raymundo's entrance, when 5 did he throw the paper away? 6 A. He threw the paper, and he just came after 7 me, you know, just right after, right after, and I 8 kept on going, kept on going, and they followed me to 9 the door. 10 Q. So after they flipped the paper, did they 11 follow you to the door or did they walk away and talk 12 amongst themselves? 13 A. They stayed behind talking, and I went up 14 into the door, and then they came along on the other 15 side, and that's when the manager was also coming in 16 and another woman, a young woman, a light skinned 17 woman was insulting her there. 18 Q. What do you mean by came along another 19 side? 20 A. They were walking along the little street 21 that was by all the parked cars, because they were 22 waiting for people to come in and park their cars and 23 then they would knock on the window. 24 Q. When you walked to the front door, they 25 stayed along the street, correct?</p>

<p style="text-align: right;">Page 220</p> <p>1 A. Yes.</p> <p>2 Q. So after they threw the paper in the air,</p> <p>3 they stayed on the street while you walked to the</p> <p>4 door, correct?</p> <p>5 A. No. When they threw the paper, I was</p> <p>6 coming along, and I was going quickly, quickly,</p> <p>7 quickly, and they were coming along behind me, and</p> <p>8 then that's where they stayed, and I went into the</p> <p>9 door.</p> <p>10 Q. Is there a street in between the parking</p> <p>11 lot and the Raymundo's entrance?</p> <p>12 A. At the entrance to the Raymundo's there's</p> <p>13 the parking lot here. Here on the corner there's the</p> <p>14 other parking lot. That's where the men were. I</p> <p>15 walked, and they followed. They turned here.</p> <p>16 There's the curb, and there's the area where someone</p> <p>17 has to cross the entire parking lot to get into</p> <p>18 Raymundo's. There's B parking, the large parking in</p> <p>19 the front, and there's the other one where you make a</p> <p>20 turn here, and there's another large parking lot,</p> <p>21 here. It was dark and it was early.</p> <p>22 HEARING OFFICER NEWMAN: Who was the manager</p> <p>23 that you saw?</p> <p>24 THE WITNESS: Enedina.</p> <p>25 HEARING OFFICER NEWMAN: Do you know their last</p>	<p style="text-align: right;">Page 222</p> <p>1 they called me an ignorant person, and that I was</p> <p>2 going to only earn \$11 an hour, and I was going to</p> <p>3 die from hunger. That's very bad what they are</p> <p>4 doing.</p> <p>5 MR. TORRES: There isn't a question asked.</p> <p>6 BY THE WITNESS:</p> <p>7 A. That's very bad what they said. If they</p> <p>8 want to engage in something with us, how are we</p> <p>9 supposed to start a conversation with them if they</p> <p>10 act like that. If they treat someone like --</p> <p>11 MR. TORRES: Objection. There's been no --</p> <p>12 HEARING OFFICER NEWMAN: Sustained.</p> <p>13 (WHEREUPON, THE WITNESS WAS STILL</p> <p>14 SPEAKING TO THE INTERPRETER.)</p> <p>15 MR. TORRES: Objection.</p> <p>16 BY MR. TORRES:</p> <p>17 Q. How do you know that they were with the</p> <p>18 Union?</p> <p>19 A. When they tried to give me the paper, they</p> <p>20 said that it was for the voting, and that's how I</p> <p>21 knew that they were these men.</p> <p>22 MR. TORRES: Nothing further.</p> <p>23 MR. ANDREWS: I have a few questions.</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 221</p> <p>1 name?</p> <p>2 THE WITNESS: No. I just know Enedina.</p> <p>3 E-N-E-D-I-N-A.</p> <p>4 BY MR. TORRES:</p> <p>5 Q. After they threw the paper, you said that</p> <p>6 they started talking amongst themselves, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Did they say anything else to you after</p> <p>9 that?</p> <p>10 A. No. Nope, I didn't give them a chance.</p> <p>11 Q. And you said there was -- Where was the</p> <p>12 manager in relation to all this happening?</p> <p>13 A. We were the two of us entering that door.</p> <p>14 Q. So she was close to you when all this</p> <p>15 happened?</p> <p>16 A. I told her what had happened in that</p> <p>17 instance because I -- I was so -- I felt so assaulted</p> <p>18 and so intimidated that I didn't know whether to call</p> <p>19 the police or what to do. I just told her what</p> <p>20 happened.</p> <p>21 Q. What did you tell her exactly?</p> <p>22 A. That I didn't want to open this thing, and</p> <p>23 that when -- after they left -- after I opened the</p> <p>24 door and I got out, they tried to give me a paper,</p> <p>25 and when I didn't want to take the paper, that's when</p>	<p style="text-align: right;">Page 223</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. ANDREWS:</p> <p>3 Q. I think what we are trying to understand</p> <p>4 is whether these men stayed close to you from your</p> <p>5 car all the way to the door.</p> <p>6 Can you tell us that?</p> <p>7 MR. TORRES: Objection. That's suggesting an</p> <p>8 answer.</p> <p>9 HEARING OFFICER NEWMAN: I'll sustain that. Is</p> <p>10 there another --</p> <p>11 MR. ANDREWS: Let me try to rephrase it another</p> <p>12 way.</p> <p>13 BY MR. ANDREWS:</p> <p>14 Q. Did the men stay close or far from you as</p> <p>15 you walked from your car to the door?</p> <p>16 A. Close. Close.</p> <p>17 HEARING OFFICER NEWMAN: About how close?</p> <p>18 THE WITNESS: From here to where this man is</p> <p>19 (indicating).</p> <p>20 HEARING OFFICER NEWMAN: Let the record show the</p> <p>21 distance that the witness is pointing to is</p> <p>22 approximately 10 feet. Is that fair?</p> <p>23 MR. TORRES: Fifteen.</p> <p>24 HEARING OFFICER NEWMAN: Everyone agree on 10 to</p> <p>25 15 feet?</p>

20 (Pages 220 to 223)

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<p style="text-align: right;">Page 224</p> <p>1 MR. TORRES: Yes.</p> <p>2 BY MR. ANDREWS:</p> <p>3 Q. Did the men stay 10 to 15 feet from you</p> <p>4 all the way up to the door?</p> <p>5 A. No. No.</p> <p>6 Q. Did they get closer or further?</p> <p>7 A. Closer. No, they did get closer when I</p> <p>8 was entering into the door from about here to where</p> <p>9 the man is.</p> <p>10 HEARING OFFICER NEWMAN: Again, let the record</p> <p>11 show that the witness is pointing to a distance which</p> <p>12 we agreed was approximately 10 to 15 feet.</p> <p>13 By MR. ANDREWS:</p> <p>14 Q. So should we understand that the distance</p> <p>15 never changed?</p> <p>16 A. No, it never changed because they came</p> <p>17 behind, behind, behind, behind.</p> <p>18 MR. ANDREWS: Okay.</p> <p>19 MR. ANDREWS: I don't have any more questions.</p> <p>20 HEARING OFFICER NEWMAN: Union.</p> <p>21 MR. TORRES: Yeah.</p> <p>22 RECROSS-EXAMINATION</p> <p>23 BY MR. TORRES:</p> <p>24 Q. When you were walking away from them, you</p> <p>25 were walking towards the door, correct?</p>	<p style="text-align: right;">Page 226</p> <p>1 excused.</p> <p>2 And the, Translator, if you would please</p> <p>3 just instruct the witness that they are to leave the</p> <p>4 room now.</p> <p>5 MR. ANDREWS: Okay. We withdraw our third</p> <p>6 objection.</p> <p>7 HEARING OFFICER NEWMAN: Okay. Can I ask is</p> <p>8 there a basis for the withdrawal or --</p> <p>9 MR. ANDREWS: Yes. We can't get people to come</p> <p>10 and testify because they are intimidated.</p> <p>11 MR. TORRES: Okay.</p> <p>12 HEARING OFFICER NEWMAN: So Union.</p> <p>13 MR. TORRES: We don't object to the withdrawal.</p> <p>14 HEARING OFFICER NEWMAN: I will recommend to the</p> <p>15 Regional Director that the Regional Director approve</p> <p>16 the withdrawal of Objection No. 3.</p> <p>17 Employer, do you have --</p> <p>18 MR. ANDREWS: We have no further witnesses.</p> <p>19 MR. TORRES: The Union, for its first witness,</p> <p>20 would like to recall Sara Moran unless we can</p> <p>21 stipulate to -- Really, I just have one question for</p> <p>22 her. Unless we can stipulate to the fact of her cell</p> <p>23 phone number.</p> <p>24 MR. ANDREWS: I don't know what her cell phone</p> <p>25 number is.</p>
<p style="text-align: right;">Page 225</p> <p>1 A. I was walking towards the door.</p> <p>2 Q. And you were looking at the door, correct?</p> <p>3 It's a yes-or-no question. Were you looking at the</p> <p>4 door, or not?</p> <p>5 A. The door was closed still.</p> <p>6 Q. As you were walking away from the two men,</p> <p>7 you were walking in the direction of the door,</p> <p>8 correct?</p> <p>9 A. Yes, I was going towards the door to go to</p> <p>10 my work building.</p> <p>11 Q. So you were looking at the door, correct?</p> <p>12 A. Should I explain again how everything</p> <p>13 happened?</p> <p>14 Q. No, I'm asking were you looking at the</p> <p>15 door when everything happened?</p> <p>16 A. Yes, I was looking at the door when they</p> <p>17 were coming behind me. And there are cameras, so you</p> <p>18 can check.</p> <p>19 Q. I would love to, actually.</p> <p>20 Where -- So you were looking at -- And</p> <p>21 they were behind you, correct?</p> <p>22 A. Yes, behind.</p> <p>23 MR. TORRES: Nothing further.</p> <p>24 MR. ANDREWS: Nothing further.</p> <p>25 HEARING OFFICER NEWMAN: Then the witness is</p>	<p style="text-align: right;">Page 227</p> <p>1 HEARING OFFICER NEWMAN: Wait. Are we -- We're</p> <p>2 still on the record.</p> <p>3 Let's go off the record.</p> <p>4 (WHEREUPON, WE WERE OFF THE</p> <p>5 RECORD.)</p> <p>6 HEARING OFFICER NEWMAN: Back on the record.</p> <p>7 So Employer.</p> <p>8 MR. ANDREWS: Yes. With respect to Employer's</p> <p>9 Exhibit 1, we move for admission into evidence at</p> <p>10 this time of Employer's Exhibit 1.</p> <p>11 HEARING OFFICER NEWMAN: Union.</p> <p>12 MR. TORRES: No objection.</p> <p>13 HEARING OFFICER NEWMAN: Then Employer 1 is</p> <p>14 received.</p> <p>15 It's my understanding that the parties</p> <p>16 wanted to enter a stipulation into the record as</p> <p>17 regards a phone number. So I'll let the Union take</p> <p>18 the floor on that, and then Employer ask if you're</p> <p>19 willing to stipulate.</p> <p>20 MR. TORRES: Yes. The Union would like to</p> <p>21 stipulate that the witness who testified earlier,</p> <p>22 Sara Moran, that her phone number is 708-275-3904.</p> <p>23 MR. ANDREWS: And the Employer stipulates that</p> <p>24 that is her number.</p> <p>25 HEARING OFFICER NEWMAN: Then the stipulation is</p>

<p style="text-align: right;">Page 228</p> <p>1 received.</p> <p>2 Let's go off the record.</p> <p>3 (WHEREUPON, WE WERE OFF THE</p> <p>4 RECORD.)</p> <p>5 HEARING OFFICER NEWMAN: So let's go back on the</p> <p>6 record.</p> <p>7 And, Union, are you calling a witness?</p> <p>8 MR. TORRES: Yes. The Union is calling Lorenzo</p> <p>9 Fernandez.</p> <p>10 HEARING OFFICER NEWMAN: Please remain standing.</p> <p>11 THE WITNESS: I do.</p> <p>12 (WHEREUPON, THE WITNESS WAS DULY</p> <p>13 SWORN.)</p> <p>14 HEARING OFFICER NEWMAN: Please have a seat.</p> <p>15 MR. ANDREWS: From the Employer, I'm just</p> <p>16 curious as to which objection this goes to.</p> <p>17 MR. TORRES: This would go to 1 and 2.</p> <p>18 HEARING OFFICER NEWMAN: Okay.</p> <p>19 LORENZO FERNANDEZ,</p> <p>20 called as a witness herein, having been first duly</p> <p>21 sworn, was examined and testified as follows:</p> <p>22 DIRECT EXAMINATION</p> <p>23 BY MR. TORRES:</p> <p>24 Q. Can you please introduce yourself.</p> <p>25 A. My name is Lorenzo Fernandez.</p>	<p style="text-align: right;">Page 230</p> <p>1 Q. So do you know if there was one or two</p> <p>2 elections involving Raymundo's and Local 881?</p> <p>3 A. I was aware that there was one election</p> <p>4 and then there was a second election.</p> <p>5 Q. Okay. And which -- Were you involved in</p> <p>6 both elections?</p> <p>7 A. More so the first one.</p> <p>8 Q. And what was your involvement with the</p> <p>9 second election?</p> <p>10 A. Just to hand out flyers.</p> <p>11 Q. All right. And what days did you hand out</p> <p>12 flyers? I'm sorry.</p> <p>13 How many days did you -- How many times</p> <p>14 did you go to Raymundo's to hand out flyers?</p> <p>15 A. Once, I believe.</p> <p>16 Q. And what day did you go to hand out</p> <p>17 flyers?</p> <p>18 A. It was a Friday, October 25th.</p> <p>19 Q. And what -- How did you hand out the</p> <p>20 flyers? What is your procedure?</p> <p>21 A. We got there, and we stood off property,</p> <p>22 and then as the workers came by, I would go then</p> <p>23 cross the street, offer them a flyer and then go back</p> <p>24 across the street. So I was never on the property</p> <p>25 more than 10 seconds.</p>
<p style="text-align: right;">Page 229</p> <p>1 Q. Lorenzo, who do you work for?</p> <p>2 A. The UFCW, United Food & Commercial</p> <p>3 Workers, Local 881.</p> <p>4 Q. What is your job title with Local 8 --</p> <p>5 A. I'm a Union organizer.</p> <p>6 Q. I'm just going to ask that you let me</p> <p>7 complete my question before you answer.</p> <p>8 A. Sure.</p> <p>9 Q. How long have you been a Union organizer?</p> <p>10 A. Three years on staff. Six years I was a</p> <p>11 SPUR prior to coming on staff. I worked for Jewel</p> <p>12 Food Stores as a manager but always under -- under</p> <p>13 the local. Then I was a SPUR which means special</p> <p>14 projects rep. That means I can come in and out of</p> <p>15 the workforce, work for the Union, get trained, and</p> <p>16 then after three years I was offered a job full</p> <p>17 staff.</p> <p>18 Q. Were you -- Who is your boss?</p> <p>19 A. Moises Zavala is my direct supervisor, but</p> <p>20 Steven Powell is the president of our local.</p> <p>21 Q. And were you involved in the Raymundo's</p> <p>22 campaign?</p> <p>23 A. Just for a little bit.</p> <p>24 Q. What do you mean by just for a little bit?</p> <p>25 A. They only brought me out once or twice.</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. And do you know who Maria Zorrilla is?</p> <p>2 A. No.</p> <p>3 Q. Did you ever have any intersection with</p> <p>4 her on, I think you said, October 25th?</p> <p>5 A. Not to my recollection, no.</p> <p>6 Q. Were you ever on the Employer's property</p> <p>7 in November?</p> <p>8 A. No.</p> <p>9 Q. Specifically were you ever on the</p> <p>10 Employer's property on November 4th?</p> <p>11 A. No.</p> <p>12 MR. TORRES: Nothing further.</p> <p>13 MR. ANDREWS: No questions.</p> <p>14 HEARING OFFICER NEWMAN: Then the witness is</p> <p>15 excused.</p> <p>16 (WHEREUPON, WE WERE OFF THE</p> <p>17 RECORD.)</p> <p>18 HEARING OFFICER NEWMAN: Back on the record.</p> <p>19 Union.</p> <p>20 MR. TORRES: Union calls Eduardo Victoria.</p> <p>21 HEARING OFFICER NEWMAN: Please remain standing.</p> <p>22 (WHEREUPON, THE WITNESS WAS DULY</p> <p>23 SWORN.)</p> <p>24 HEARING OFFICER NEWMAN: Please be seated.</p> <p>25 MR. TORRES: This will go to Objections 1 and 2.</p>

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<p>1 HEARING OFFICER NEWMAN: And state your name</p> <p>2 again for the record, please.</p> <p>3 THE WITNESS: My name is Eduardo. Last name</p> <p>4 Victoria.</p> <p>5 EDUARDO VICTORIA,</p> <p>6 called as a witness herein, having been first duly</p> <p>7 sworn, was examined and testified as follows:</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. TORRES:</p> <p>10 Q. Eduardo, who are you employed by?</p> <p>11 A. Local 881, United Food & Commercial</p> <p>12 Workers.</p> <p>13 Q. And how long have you been employed by</p> <p>14 Local 881?</p> <p>15 A. Eleven years.</p> <p>16 Q. How long have you been employed by Local</p> <p>17 881?</p> <p>18 A. Eleven years.</p> <p>19 Q. And what is your job position?</p> <p>20 A. I'm an organizer.</p> <p>21 Q. An organizer?</p> <p>22 A. Yes, sir.</p> <p>23 Q. How long have you been an organizer?</p> <p>24 A. With 881?</p> <p>25 Q. With 881.</p>	<p>1 A. 2:30 p.m. to 3:00 p.m. we were passing</p> <p>2 flyers.</p> <p>3 Q. At any point on November 4th were you near</p> <p>4 the parking lot?</p> <p>5 A. Yes, sir.</p> <p>6 Q. At what point were you near the parking</p> <p>7 lot?</p> <p>8 HEARING OFFICER NEWMAN: Which parking lot do</p> <p>9 you mean?</p> <p>10 MR. TORRES: I'm sorry. I'm sorry.</p> <p>11 BY MR. TORRES:</p> <p>12 Q. How many -- Strike that.</p> <p>13 Does Raymundo's have parking lots for</p> <p>14 their employees?</p> <p>15 A. Yes, sir.</p> <p>16 Q. How do you know that?</p> <p>17 A. Because it's by the facilities.</p> <p>18 HEARING OFFICER NEWMAN: How do you know that?</p> <p>19 THE WITNESS: Because I went to Raymundo's many</p> <p>20 times before.</p> <p>21 HEARING OFFICER NEWMAN: Okay.</p> <p>22 BY MR. TORRES:</p> <p>23 Q. And how many parking lots do they have?</p> <p>24 A. As far as I know, there was only one on</p> <p>25 the back side. It's a big lot. Then the sidewalk</p>
Page 233	Page 235
<p>1 A. Eleven years.</p> <p>2 Q. Were you involved in the Raymundo's</p> <p>3 organizing campaign?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Were you on the Employer's facility on</p> <p>6 November -- on Monday, November 4th?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what were you doing at the Employer's</p> <p>9 facility that day?</p> <p>10 A. Can I look at my notes?</p> <p>11 Q. No, you can't look at your notes. This</p> <p>12 will have to be from memory.</p> <p>13 A. That day we went from 2:30 to 3:00 p.m. to</p> <p>14 Lockwood and 73. There's a stop sign. We pass</p> <p>15 flyers. Then we went again at night.</p> <p>16 Q. I'm sorry. Where is Lockwood and 73</p> <p>17 compared to Raymundo's, the facility?</p> <p>18 A. Like five blocks away, right.</p> <p>19 Q. But it -- Lockwood and 73rd Street is --</p> <p>20 Can you see Raymundo's from Lockwood and 73rd Street?</p> <p>21 A. No.</p> <p>22 Q. And were you passing out -- What were you</p> <p>23 doing that day at Lockwood and 73rd?</p> <p>24 A. From 2:30 to 3:00 we were passing flyers.</p> <p>25 Q. Is that 2:30 p.m.?</p>	<p>1 where the workers park in the back -- Next to the</p> <p>2 plant it's a parking lot.</p> <p>3 Q. Okay. And so at any point -- How close to</p> <p>4 that parking lot to, I guess, the Raymundo's</p> <p>5 building?</p> <p>6 A. It's next to it.</p> <p>7 Q. Okay. It's next to it?</p> <p>8 A. Um-hum.</p> <p>9 Q. At any point on November 4th did you go to</p> <p>10 that back parking lot area?</p> <p>11 A. Yes, sir.</p> <p>12 Q. At what point during -- At what time of</p> <p>13 the day did you go to it on November 4th?</p> <p>14 A. On November 4th, like I was telling you,</p> <p>15 we passed flyers from 2:30 to 3:00, and then we went</p> <p>16 again to Lockwood and 73 to pass flyers again from</p> <p>17 9:30 to around 10:00. Then --</p> <p>18 Q. Is that 9:30 p.m.?</p> <p>19 A. 9:30 p.m., sir.</p> <p>20 Q. To 10:00 p.m.?</p> <p>21 A. To 10:00 p.m., sir, yes.</p> <p>22 Q. Okay.</p> <p>23 A. Then I was with my director, Moises</p> <p>24 Zavala, passing the flyers. When we finished the</p> <p>25 flyers, we went to the parking lot to see Jorge</p>

23 (Pages 232 to 235)

<p style="text-align: right;">Page 236</p> <p>1 Mojica and Margarita from Arise, what were they 2 doing. 3 Q. Who is Jorge Mojica and -- What was the 4 other name? 5 A. Margarita. 6 Q. Margarita. Who are they? 7 A. They are activists with Arise. 8 Q. And what's Arise? 9 A. Arise is a nonprofit organization. 10 Q. The nonprofit organization, do you know 11 what they do? 12 A. Faith organization that it's helping 13 workers to know their rights. 14 Q. Okay. Prior to -- So why did you and 15 Moises go to speak to Arise on November 4th in the 16 parking lot? 17 A. We went to see what they were doing. 18 Q. So prior to November 4th, did you know 19 that Arise was going to be in the parking lot? 20 A. I can't remember because -- Yes. 21 Q. Okay. On November 4th, did you have any 22 interactions with a Maria Zorrilla? 23 A. I don't know who Maria Zorrilla is. I 24 know her by name. 25 Q. How do you know her by name?</p>	<p style="text-align: right;">Page 238</p> <p>1 A. Okay. 2 Q. Are you looking at Page 7? 3 A. Yes. 4 Q. Do you see the picture with the, it looks 5 like, different variations of Rosie the Riveter? 6 A. Yes. 7 Q. Who is this text conversation with? Well, 8 do you recognize this conversation? 9 A. Yes, sir, I recognize this conversation. 10 It's with Virginia Rivera. 11 Q. So this is a text conversation between you 12 and Virginia Rivera? 13 A. Yes, sir. 14 Q. So prior to November 3rd, you had sent 15 Virginia, I guess, campaign texts; is that right? 16 A. Yes, sir, that's right. 17 Q. And when was the first time that she 18 responded to your campaign text? 19 A. On November 3rd. 20 Q. And what did she say to you? 21 A. Well, she said -- I'll try to translate 22 this. 23 Q. Read it in Spanish and then -- 24 MS. REPORTER: I'm sorry. I don't write 25 Spanish.</p>
<p style="text-align: right;">Page 237</p> <p>1 A. Because the workers told me that she's 2 very anti-Union. 3 Q. All right. Let's shift gears here. I'm 4 going to shift to Objection, I think this will be, I 5 now. 6 Did you call employees as part of the 7 organizing campaign for Local 881? 8 A. Yes, sir. 9 Q. Do you recall any conversation with an 10 employee named Virginia Rivera? 11 A. With Virginia Rivera I remember a text, 12 not a call. 13 Q. Okay. Strike that. 14 With Sara Moran. Do you recall any phone 15 conversation with Sara Moran? 16 A. No, sir. 17 Q. Okay. Do you know if you -- Strike that. 18 Did you call -- About how many employees 19 did you call as part of the organizing campaign with 20 Raymundo's? 21 A. I was calling around 20, 25 workers per 22 day. 23 Q. All right. I would like to direct your 24 attention to Employer Exhibit 1. All right. Can 25 you turn to Page 8 -- I'm sorry -- 7.</p>	<p style="text-align: right;">Page 239</p> <p>1 MR. ANDREWS: At this point if we're going to do 2 translations, we should probably have the translator 3 do that. 4 MR. TORRES: Well, to be fair, you know there's 5 certain translation depending on how you interpret 6 Spanish. Spanish has very different meanings 7 depending on where you're from, and the words like -- 8 the words in this text, you know, they mean something 9 very different than, I guess, a straightforward 10 translation that the translator provided. 11 HEARING OFFICER NEWMAN: I think we agreed -- My 12 thought is we agreed that we would have the 13 translator do the translation. And if I recall, 14 there was even one section where we put into the 15 record a couple of different -- Probably this section 16 here, right -- a couple of different ways that that 17 could be interpreted. And, in fact, I would say that 18 having the witness testify about this document might 19 not be all that useful because, you know, it's its 20 own best evidence. 21 MR. TORRES: Okay. That's fair. 22 BY MR. TORRES: 23 Q. Did you continue texting Virginia after 24 this conversation on November 3rd? 25 A. No, sir.</p>

<p style="text-align: right;">Page 240</p> <p>1 Q. Why did you -- In these text messages did 2 you tell Virginia that you may call the police? 3 A. Yes, sir. 4 Q. Why did you -- Why did you text that? In 5 fact, why did you text that? 6 A. Because I send her a text in a very 7 positive way, (Witness speaking Spanish) probably in 8 future we can have a better understanding, and wish 9 you the best. So after that she send another one 10 kind of aggressive. You know, I was like, please, 11 don't send me more messages or I have to call the 12 police, asking her to please stop doing this, because 13 in the very first message she cursed me really bad. 14 HEARING OFFICER NEWMAN: I guess my thought here 15 on this would be if there's any additional extrinsic 16 evidence outside of the document itself, I'd like to 17 know about it. Otherwise, again, I think the 18 document speaks for itself. 19 MR. TORRES: That's fair. That's fair. Sorry 20 I'm jumping around here. 21 HEARING OFFICER NEWMAN: That's okay. 22 MR. TORRES: That's not going to make for a 23 perfectly clean record. 24 BY MR. TORRES: 25 Q. All right. I'd like to go back to Sara</p>	<p style="text-align: right;">Page 242</p> <p>1 Have you ever followed an employee from 2 the parking lot to Raymundo's front door? 3 A. No, sir. 4 MR. TORRES: Nothing further. 5 CROSS-EXAMINATION 6 BY MR. ANDREWS: 7 Q. When you were first asked if you 8 remembered a conversation with Sara Moran, you said I 9 don't recall, isn't that right? 10 A. Yes, sir. 11 Q. Then later under direct leading questions 12 your attorney asked if you ever said anything about 13 the word immigrant to her, you said no. How is it 14 that suddenly you remembered when you were given a 15 leading question -- 16 MR. TORRES: Objection. He's misstating my 17 question to the witness. 18 HEARING OFFICER NEWMAN: I'll let him -- I'll 19 let the Employer finish the question. 20 BY MR. ANDREWS: 21 Q. How is it that when you were asked if he 22 used the word immigrant, you suddenly recalled having 23 a conversation with Sara Moran? 24 A. It's simple, sir. Look, I was looking on 25 my records when I was in the witness room. I was</p>
<p style="text-align: right;">Page 241</p> <p>1 Moran. 2 At any point did you ever tell Sara Moran 3 that you should vote for the Union because they're 4 immigrants? 5 A. No, sir. 6 Q. Did you have -- In any conversation, you 7 know, with Sara Moran, did you ever tell her that it 8 could be in her interest to vote for the Union 9 because they are immigrants? 10 A. No, sir. 11 Q. Did you ever use the word deport or any 12 kind of conversation -- or any similar type word with 13 her, in conversations with Sara Moran? 14 A. No, sir. 15 Q. Now, I know -- I know you said you 16 wouldn't recognize Maria Zorrilla. In your -- On 17 November 4th, or for that matter, anytime you've 18 handled or passed out flyers at Raymundo's, have you 19 ever, I guess, intimidated an employee? 20 A. No, sir. 21 Q. Have you ever -- Have you ever insulted an 22 employee? 23 A. No, sir. 24 Q. Have you ever stalked an employee from 25 the -- I'm sorry. Strike that.</p>	<p style="text-align: right;">Page 243</p> <p>1 looking on my records when I was in the witness room. 2 So that conversation with that number, particularly 3 that number, five minutes. I remembered that 4 conversation because that day I saw my records, and I 5 have all my records because I have a boss, and I have 6 to give to my boss all my reports. So in the witness 7 room I saw my logs from my phone. I saw all my 8 records, then I compared my records with my notes and 9 the notes that I give to my boss, and that's how I 10 recall the call. Obviously I'm doing -- I did 20, 25 11 calls per day. So in the top of my mind, no. But if 12 I can see my records and I can see my notes, I can 13 remember. 14 Q. So when you first sat here and were asked 15 a question do you recall speaking -- actually, the 16 words were do you recall a conversation with Sara 17 Moran, you said I don't recall? 18 A. I don't recall -- I didn't recall the 19 call. But after I saw my records, I saw the -- 20 Q. Did you look at your records in between 21 the first question and when he asked the question 22 about did he use the word immigrant? 23 A. No. I saw my records when I was in the 24 witness room. 25 MR. TORRES: I'm going to object to this again</p>

25 (Pages 240 to 243)

<p style="text-align: right;">Page 244</p> <p>1 because my question wasn't in regards to Sara Moran 2 in the follow-up questions. It was about employees 3 in general. Not about specifically Sara Moran. 4 HEARING OFFICER NEWMAN: Okay. I'm going to 5 allow the questioning that's happened up to this 6 point. But I think I would definitely say that the 7 broader point -- Well, at this point -- Actually, 8 strike that. 9 It sounds like you recall -- if I'm 10 understanding correctly, you recall not necessarily a 11 conversation by name in terms of whom -- with whom 12 the conversation was with, but by phone number, is 13 that accurate? 14 THE WITNESS: Yes, sir. Because in my records I 15 have phone numbers. Her last -- It's 224, and the 16 last number is 09 something. 17 MR. ANDREWS: He's referring to records that we 18 don't have, so I object. It's a hearsay reference 19 that he's making. 20 MR. TORRES: That's fine. 21 HEARING OFFICER NEWMAN: Go ahead, Union. 22 MR. TORRES: Yeah, that's fine. It's a hearsay 23 objection. We don't have a response to that. 24 HEARING OFFICER NEWMAN: Okay. Then it's 25 sustained. Well, your concerns are noted on the</p>	<p style="text-align: right;">Page 246</p> <p>1 Q. So not in this room? Not between the 2 first time you were asked about Sara Moran and then 3 later when you testified about Sara Moran, you didn't 4 refresh your recollection by referring to any 5 documents -- 6 MR. TORRES: I'm going to object again based on 7 mischaracterization of my questions to him. He's 8 mischaracterizing the questions I asked. 9 HEARING OFFICER NEWMAN: I'm going to overrule 10 your objection. 11 And, Employer, I believe what you're 12 trying to ask is at any time that you've either been 13 in the room or on the witness stand, did you look at 14 anything, especially your notes, to refresh your 15 recollection? Is that a fair assessment of your 16 question? 17 MR. ANDREWS: That's a fair assessment, yes. 18 HEARING OFFICER NEWMAN: So please answer that 19 question. 20 THE WITNESS: Say the question again. 21 HEARING OFFICER NEWMAN: All right. The 22 question is during the time you've been in this room, 23 and more importantly on the witness stand, did you 24 look at anything to refresh your recollection? Did 25 you look at your notes or any other kind of materials</p>
<p style="text-align: right;">Page 245</p> <p>1 record. I think the important question here is 2 whether or not you have any recollection of the type 3 of conversation, right, that is being alleged here, 4 and I guess whether you recall whether there was 5 anything specific to the conversations on that 6 particular day if you are able to recall. 7 A. Yes, sir, because I brought it in my 8 notes. 9 MR. ANDREWS: Objection again. He's referring 10 to notes that we don't have. 11 HEARING OFFICER NEWMAN: I don't think he -- I 12 believe what he's saying is that he refreshed his 13 recollection by looking at notes. I think he -- if I 14 understand the witness correctly, he's telling us how 15 it is that he has a recollection of this. 16 THE WITNESS: Yes, sir. 17 HEARING OFFICER NEWMAN: Which I don't think 18 requires that those notes be provided. 19 MR. ANDREWS: May I ask him a question then? 20 HEARING OFFICER NEWMAN: Sure. 21 BY MR. ANDREWS: 22 Q. Did you refresh your recollection while 23 you were in this room? 24 A. Again, when I was in the witness room, 25 sir.</p>	<p style="text-align: right;">Page 247</p> <p>1 to help you remember something? 2 THE WITNESS: In this witness room? 3 HEARING OFFICER NEWMAN: Yes. 4 THE WITNESS: No, sir. 5 HEARING OFFICER NEWMAN: But we did establish 6 that prior to coming in here you looked at something 7 to help you remember the events that we're talking 8 about here? 9 THE WITNESS: Yes, sir. 10 HEARING OFFICER NEWMAN: Which I think is 11 relevant to the extent that he's just explaining how 12 it is that he came to recall some specific details 13 that he might not otherwise have remembered. 14 THE WITNESS: Yes, sir, because I -- Can I? 15 HEARING OFFICER NEWMAN: Yes. Sure. Go ahead. 16 THE WITNESS: Because in my notes I wrote down 17 that she told me. 18 HEARING OFFICER NEWMAN: Who told you? One of 19 the people whose phone numbers is listed? 20 THE WITNESS: Sara Moran. The 09224 on the last 21 number -- 22 HEARING OFFICER NEWMAN: But based on what we 23 talked about before, you don't recall by name who it 24 is that you spoke with; is that correct? 25 THE WITNESS: No, sir.</p>

26 (Pages 244 to 247)

<p style="text-align: right;">Page 248</p> <p>1 HEARING OFFICER NEWMAN: Okay. Well, go ahead, 2 though. 3 What were you saying about -- about 4 whatever you -- 5 THE WITNESS: Yeah, she told me that can I 6 called you later? Yes. So I wrote she told me that 7 she's going to call me later. So I wrote follow up. 8 BY MR. ANDREWS: 9 Q. Is it your testimony that you were not at 10 the facility anywhere between 5:00 in the morning and 11 7:00 in the morning anytime during the time that you 12 were campaigning on behalf of the Union at 13 Raymundo's? 14 A. No, sir, I went in the morning -- 15 Q. What time? 16 A. Which day? 17 Q. On November 4th? 18 A. No. On November 4th, I told you, I was 19 from 2:30 to 3:00, and then from -- I wasn't on 73 20 and Lockwood. Then from 9:30 to 10:00 p.m., 73 and 21 Lockwood. Then with my director we went to the 22 parking lot at Raymundo's at night, around 10:05, 23 maybe, p.m. Not early in the morning on 24 November 4th. 25 Q. And you met up with who in the parking</p>	<p style="text-align: right;">Page 250</p> <p>1 Q. And what day was this again? 2 A. November 4th. I saw it in my records. 3 Q. So were they assisting you with 4 organizing? 5 A. No, sir, they were there with the 6 organization, talking with the workers, because they 7 are members -- As far as I know, some of them are 8 members from the organization. 9 Q. This was two days before the election? 10 A. Yes. 11 Q. Did they have any literature with them? 12 A. I saw them there, just them talking. 13 Q. They didn't have any papers in their 14 hands? 15 A. I'm telling you again, I saw them between 16 them talking. 17 HEARING OFFICER NEWMAN: Yeah, but his question 18 was, did you see whether or not they had any papers 19 in their hands? 20 THE WITNESS: I didn't see any papers in their 21 hands. 22 HEARING OFFICER NEWMAN: Okay. 23 BY MR. ANDREWS: 24 Q. So is it your testimony that it's okay 25 that if someone curses you in a conversation it's</p>
<p style="text-align: right;">Page 249</p> <p>1 lot? 2 A. No, we went to see Jorge and Margarita, 3 what were they doing. 4 Q. And what were they doing? 5 A. They were on the sidewalk. 6 Q. And what were they doing? 7 A. They were there. 8 Q. Just standing there? 9 A. They were there for the workers, I guess. 10 They were there. 11 Q. And this is during your organizing 12 campaign? 13 A. They were there, yeah. 14 Q. So were they talking with workers during 15 your organizing campaign? 16 A. They were there. We went there just to 17 see what were they doing. 18 Q. And did you see them talking to workers? 19 A. I saw them outside, Margarita and Jorge, 20 there, outside -- 21 Q. And they were just standing there? 22 A. You know what, yeah, they were just 23 standing there. 24 Q. And they weren't talking to anyone? 25 A. Between them.</p>	<p style="text-align: right;">Page 251</p> <p>1 okay for you to tell them you're going to call the 2 police? 3 MR. TORRES: Objection. It's argumentative. 4 HEARING OFFICER NEWMAN: Employer, what's the 5 purpose of the question? 6 MR. ANDREWS: The question is we didn't get a 7 full accounting of -- All I have here is she said it 8 in an aggressive method, she cursed me, and then I'm 9 asking if he then said I'm going to call the police. 10 HEARING OFFICER NEWMAN: Well, we know that he 11 said it. 12 BY MR. ANDREWS: 13 Q. I'm asking if someone curses you, is your 14 response usually to tell them I'm going to call the 15 police? 16 HEARING OFFICER NEWMAN: How is that relevant? 17 What he usually does, how is that relevant to what 18 was -- 19 MR. ANDREWS: Well, let me ask -- It's relevant 20 because he's trying to tell us that that's normal 21 behavior for a Union organizer. 22 MR. TORRES: I don't think he said that at all, 23 your Honor. I think he's misstating his testimony. 24 MR. ANDREWS: Well, then let's ask him if that's 25 his normal behavior.</p>

<p style="text-align: right;">Page 252</p> <p>1 MR. TORRES: Well, we tried to --</p> <p>2 HEARING OFFICER NEWMAN: I just don't know how</p> <p>3 relevant that is. What he does on a regular basis</p> <p>4 has no bearing on whether or not the particular words</p> <p>5 he used --</p> <p>6 MR. ANDREWS: I'll withdraw the question. Let</p> <p>7 me ask this question then.</p> <p>8 HEARING OFFICER NEWMAN: Okay.</p> <p>9 BY MR. ANDREWS:</p> <p>10 Q. Why did you tell Virginia that you were</p> <p>11 going to call the police on her?</p> <p>12 A. You can see the paper, the text. First</p> <p>13 she cursed me, right, very bad. Then I asked her, I</p> <p>14 said what are you going to get with all this bad</p> <p>15 words? Then she was going and going. Then -- This</p> <p>16 is very important why I told her about the police.</p> <p>17 Number one, you're not going to get any more messages</p> <p>18 from us, from the very first message. Leave it</p> <p>19 alone, you know, you won't get more messages. Then</p> <p>20 it's not true that we are, you know, texting you all</p> <p>21 day. That's not true. That's an exaggeration. Then</p> <p>22 respect the messages. She come with the message from</p> <p>23 the last time, from the first campaign. Well, that's</p> <p>24 your opinion. It's your opinion valid, and we</p> <p>25 respect that opinion. Let's leave this conversation</p>	<p style="text-align: right;">Page 254</p> <p>1 BY MR. ANDREWS:</p> <p>2 Q. Had she ever texted you other than when</p> <p>3 you started the text?</p> <p>4 HEARING OFFICER NEWMAN: No. No. No. Let's</p> <p>5 not confuse things. Just, if I may, Employer. And</p> <p>6 if you have another question, I'll let you ask it.</p> <p>7 This document which has been admitted,</p> <p>8 it's Employer Exhibit No. 1, has a series of text</p> <p>9 messages, and both parties have texted back and forth</p> <p>10 in this text exchange, right? Did you -- Did either</p> <p>11 of you text each other outside of this text exchange</p> <p>12 that's included in this document right here?</p> <p>13 THE WITNESS: No, sir.</p> <p>14 HEARING OFFICER NEWMAN: Are you aware of any</p> <p>15 other times that either of you texted the other?</p> <p>16 THE WITNESS: No, sir.</p> <p>17 HEARING OFFICER NEWMAN: Say that again?</p> <p>18 THE WITNESS: No, sir.</p> <p>19 HEARING OFFICER NEWMAN: Okay.</p> <p>20 So Employer.</p> <p>21 MR. ANDREWS: Let me ask it this way.</p> <p>22 BY MR. ANDREWS:</p> <p>23 Q. Did you start this text exchange or did</p> <p>24 Virginia start the text exchange?</p> <p>25 A. Okay. We send her text.</p>
<p style="text-align: right;">Page 253</p> <p>1 here and hopefully in the future we can have a better</p> <p>2 understanding. We wish you the best. So it was</p> <p>3 really positive, sir. It was really positive. Then</p> <p>4 she again with the messages yesterday, every day. So</p> <p>5 I was don't text me again or I'm going to call the</p> <p>6 cops.</p> <p>7 Q. Let me ask you this.</p> <p>8 Had she ever texted you without you first</p> <p>9 texting her?</p> <p>10 MR. TORRES: Objection. Relevance.</p> <p>11 MR. ANDREWS: He just said don't ever text me.</p> <p>12 I'm asking if she had ever sent an unsolicited text</p> <p>13 to him?</p> <p>14 HEARING OFFICER NEWMAN: I think I'm going to</p> <p>15 overrule the objection. But I would recommend that</p> <p>16 maybe the better way to ask the question would be to</p> <p>17 ask whether or not he's aware of any other text</p> <p>18 exchange by either of them that are outside of this</p> <p>19 document.</p> <p>20 MR. ANDREWS: Well, that's a good question too,</p> <p>21 I imagine. But my question is did she ever text you?</p> <p>22 HEARING OFFICER NEWMAN: Well, it's the same</p> <p>23 question</p> <p>24 MR. ANDREWS: Let me just ask it.</p> <p>25</p>	<p style="text-align: right;">Page 255</p> <p>1 Q. I'm just saying --</p> <p>2 A. That's a tricky question because we send</p> <p>3 her a lot of text from the campaign. Then she -- The</p> <p>4 first one that we send to her was in October 20th or</p> <p>5 something like that. It's right here, the date.</p> <p>6 Then by November 3rd she cursed me.</p> <p>7 Q. All right. On November 3rd did she just</p> <p>8 curse you out of the blue?</p> <p>9 A. On November 3rd she cursed me -- Let me</p> <p>10 show you. On November 3rd she cursed me right after</p> <p>11 I send her Rosie the Riveter.</p> <p>12 Q. So you started the text exchange by</p> <p>13 sending her --</p> <p>14 A. We started the text -- We send text from</p> <p>15 October 20th. We sent general text to everyone.</p> <p>16 Q. Then on November 3rd you sent her a text,</p> <p>17 right?</p> <p>18 A. On November 3rd we sent texts to everyone.</p> <p>19 MR. TORRES: Objection. The record speaks for</p> <p>20 itself.</p> <p>21 MR. ANDREWS: I don't know if it speaks for</p> <p>22 itself. He's asking several questions.</p> <p>23 BY MR. ANDREWS:</p> <p>24 Q. Did you send Virginia a text on</p> <p>25 November 3rd?</p>

<p style="text-align: right;">Page 256</p> <p>1 A. On November 3rd I sent Rosie the Riveter 2 to the majority of the workers -- 3 Q. Did that include Virginia? 4 A. That included Virginia. 5 Q. All right. 6 HEARING OFFICER NEWMAN: So I'll allow the 7 testimony up to this point. But I will say if 8 there's no other extrinsic communication that 9 occurred outside the context of this -- or the scope 10 of this document, then I think the document speaks 11 for itself. 12 MR. ANDREWS: All right. I don't have any 13 further questions. 14 MR. TORRES: Follow-up questions. 15 REDIRECT EXAMINATION 16 BY MR. TORRES: 17 Q. So you testified that you and Moises went 18 to go see Jorge and the other employee from Arise 19 on -- that would have been November 4th? 20 A. Yes, sir. 21 Q. And that's because they were standing 22 around the parking lot? 23 A. Yes, they were there. 24 Q. How long -- Did you go talk to them? 25 A. No, I went there like three minutes.</p>	<p style="text-align: right;">Page 258</p> <p>1 with employees? 2 A. No, sir. 3 Q. After the conversation was over with 4 Jorge, did you have any interactions with employees 5 before you left the Employer's facility? 6 A. No, sir. 7 MR. TORRES: Nothing further. 8 MR. ANDREWS: No questions. 9 HEARING OFFICER NEWMAN: Then the witness is 10 excused. 11 MR. TORRES: The Union will need a short break 12 to speak with cocounsel and figure out where to go 13 next with this. 14 HEARING OFFICER NEWMAN: Okay. Let's go off the 15 record. 16 (WHEREUPON, WE WERE OFF THE 17 RECORD.) 18 HEARING OFFICER NEWMAN: Back on the record. 19 Union. 20 MR. TORRES: Union calls Susan Georgelos. 21 HEARING OFFICER NEWMAN: Please remain standing. 22 THE WITNESS: I do. 23 (WHEREUPON, THE WITNESS WAS DULY 24 SWORN.) 25 HEARING OFFICER NEWMAN: Please have a seat.</p>
<p style="text-align: right;">Page 257</p> <p>1 Q. Did you talk to them? 2 A. We just say hello to them. That's it. 3 Q. Okay. And then where did you go after you 4 spoke to Jorge? 5 A. Where did we go? 6 Q. Yeah. 7 A. To our home. 8 Q. To where? 9 A. To -- After -- You're talking about 10 November -- 11 Q. After you spoke to Jorge, where did you 12 and Moises go? Did you stay around the parking lot 13 or did you go -- 14 A. No, we go home. 15 Q. So after you spoke to Jorge, did you leave 16 the Employer's facility? 17 A. Yes. 18 Q. And, again, just for clarity here. 19 How long was your conversation or your 20 intersection with Jorge? 21 A. Between 3 and 5 minutes. 22 Q. During that time did you speak to any 23 employees? From the time you began -- Strike that. 24 From the time you began your conversation 25 with Jorge, to its end, did you have any interactions</p>	<p style="text-align: right;">Page 259</p> <p>1 And if you would, tell us your name again and then 2 who you work for and what your position is. 3 THE WITNESS: My name is Susan Georgelos, and 4 I'm the administrative assistant to the president of 5 Local 881, UFCW. 6 SUSAN GEORGELOS, 7 called as a witness herein, having been first duly 8 sworn, was examined and testified as follows: 9 DIRECT EXAMINATION 10 BY MR. TORRES: 11 Q. Susan, what are your job duties? 12 A. Of course being the administrative 13 assistant to the president I have many. So one of 14 them is I handle the phones for Local 881. 15 Q. As part of your -- what you described as 16 handling the phones, do you -- are you -- do you 17 collect -- upon request, do you collect employees' 18 cell phone information? 19 A. Yes, I do. 20 Q. And is that part of your job duties? 21 A. Yes. 22 Q. How do you collect an employee's cell 23 phone information? 24 A. I log into our Verizon Wireless portal for 25 business, and all our 48 cell phones are listed on</p>

<p style="text-align: right;">Page 260</p> <p>1 there, so I can pull any information that is 2 requested. 3 Q. I'm handing you what has been marked as 4 Union Exhibit 1. 5 Do you recognize this exhibit? 6 A. Yes, I do. 7 Q. What is it? 8 A. It's the wireless number 224-234-4261 for 9 Eduardo Victoria with dates October 18th through 10 November 6th. 11 Q. And when was the first time you saw this 12 document? 13 A. Last week when I ran it. It was last 14 week. 15 Q. What do you mean by ran it? 16 A. When I went into the portal to get -- 17 Q. To get this information? 18 A. Yes. 19 Q. When you say portal, you mean the Verizon 20 portal? 21 A. Yes, the Verizon business portal. 22 Q. And how do you access the Verizon business 23 portal? 24 A. I have to log in with our information, and 25 it's our account information. So how the cell phones</p>	<p style="text-align: right;">Page 262</p> <p>1 VOIR DIRE 2 BY MR. ANDREWS: 3 Q. This purports to be a record of phone 4 calls made by Eduardo Victoria; is that correct? 5 A. Yes, incoming and outgoing calls to his 6 cell number. 7 Q. Do you know whether Eduardo Victoria ever 8 uses any other telephone number which would not be on 9 this? 10 A. (Inaudible). 11 MS. REPORTER: I'm sorry. I can't hear you. 12 MR. TORRES: Objection. That's outside of -- 13 HEARING OFFICER NEWMAN: Hold on. One second. 14 MS. REPORTER: I didn't hear her answer. 15 HEARING OFFICER NEWMAN: The court reporter 16 wasn't able to hear your answer. 17 THE WITNESS: I'm sorry. 18 HEARING OFFICER NEWMAN: Do you want to reask 19 your question -- 20 Or do you have an objection? 21 MR. TORRES: I have an objection. That's 22 outside of voir dire. 23 HEARING OFFICER NEWMAN: That's true. 24 MR. TORRES: That's not relevant. 25 MR. ANDREWS: I guess then I'd ask what's the</p>
<p style="text-align: right;">Page 261</p> <p>1 are set up, anything that pertains to any cell 2 number, I can access. 3 Q. And do the cell records track incoming and 4 outgoing calls? 5 A. Yes, they do. 6 Q. And can it be identified specific to an 7 employee's cell number? 8 A. Yes. 9 Q. And what date range did you run Union 10 Exhibit 1 for? 11 A. I ran one for Eduardo October 18th through 12 November 6th. 13 Q. And is Union Exhibit 1 a true and correct 14 copy of the data report you ran -- 15 A. Yes. 16 Q. -- for Eduardo Victoria's cell phone 17 number? 18 A. Yes. 19 MR. TORRES: Union moves to admit Union 20 Exhibit 1. 21 HEARING OFFICER NEWMAN: Employer. 22 MR. TORRES: I would have some questions about 23 this. 24 HEARING OFFICER NEWMAN: Okay. 25</p>	<p style="text-align: right;">Page 263</p> <p>1 purpose of this if we don't know whether Eduardo 2 Victoria has ever used any other telephone numbers? 3 MR. TORRES: We can -- We can establish that at 4 least based on this number, that these are all the 5 calls that came out, and that we can bring Eduardo 6 back on, if we must, and ask if he's ever used 7 another cell phone number to call employees. 8 HEARING OFFICER NEWMAN: Okay. So I'll sustain 9 your concern. Let's define what this document is and 10 what it is not. If you have any questions about its 11 foundation or issues with the document, now is the 12 time to ask those questions. 13 BY MR. ANDREWS: 14 Q. Just so I understand, this would only 15 provide ingoing -- incoming and outgoing calls for 16 number 224-234-4261, correct? 17 A. Correct. 18 MR. ANDREWS: I have no further objection with 19 that. 20 HEARING OFFICER NEWMAN: So then no objection to 21 its receipt? 22 MR. ANDREWS: No. 23 HEARING OFFICER NEWMAN: Then Union 1 is 24 received. 25</p>

<p style="text-align: right;">Page 264</p> <p>1 CONTINUED DIRECT EXAMINATION</p> <p>2 BY MR. TORRES:</p> <p>3 Q. Susan, if you could turn to the dates</p> <p>4 showing November 2nd through November 3rd.</p> <p>5 Do you -- Are there any ingoing or</p> <p>6 outgoing calls either to or from the number</p> <p>7 708-275-3904?</p> <p>8 A. No.</p> <p>9 MR. TORRES: Nothing further.</p> <p>10 HEARING OFFICER NEWMAN: Employer. And you're</p> <p>11 free to ask the questions that you --</p> <p>12 MR. ANDREWS: Right.</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MR. ANDREWS:</p> <p>15 Q. Do you know whether Eduardo Victoria has</p> <p>16 any other telephone number?</p> <p>17 A. Another cell number?</p> <p>18 Q. Any other phone number.</p> <p>19 A. The office number. He can call in.</p> <p>20 Q. So do you know whether he has any other</p> <p>21 phone number?</p> <p>22 A. No.</p> <p>23 HEARING OFFICER NEWMAN: No, you don't know</p> <p>24 or --</p> <p>25 THE WITNESS: No, I don't know if he has another</p>	<p style="text-align: right;">Page 266</p> <p>1 HEARING OFFICER NEWMAN: Employer, any</p> <p>2 additional witnesses?</p> <p>3 MR. ANDREWS: We have no further witnesses.</p> <p>4 HEARING OFFICER NEWMAN: Does any party have any</p> <p>5 additional evidence that they would like to present</p> <p>6 at this time?</p> <p>7 MR. TORRES: No.</p> <p>8 MR. ANDREWS: No.</p> <p>9 HEARING OFFICER NEWMAN: Okay. Well, seeing</p> <p>10 that the evidence appears to have closed out for the</p> <p>11 hearing, I will say, having talked to court reporter,</p> <p>12 it sounds like the transcript length is approximately</p> <p>13 130 pages. I am going to allow the parties to</p> <p>14 present briefs and -- So if you would, please present</p> <p>15 your briefs by either close of business, which for</p> <p>16 this office is 4:59 p.m. on December 9, 2019, or if</p> <p>17 electronically filed, I believe you get until 11:59</p> <p>18 on the date it's due, which I'm setting briefs again</p> <p>19 due on December 9, 2019. I'm also requiring that the</p> <p>20 parties submit briefs that are no longer than 10</p> <p>21 pages, double spaced. I'm assuming that you would</p> <p>22 use a 12-point font with something like Times New</p> <p>23 Roman or Arial.</p> <p>24 Okay. So with that, anything further from</p> <p>25 either party at this time?</p>
<p style="text-align: right;">Page 265</p> <p>1 phone number. He has an office phone.</p> <p>2 HEARING OFFICER NEWMAN: He has his own personal</p> <p>3 office phone or is there one office phone for</p> <p>4 everyone?</p> <p>5 THE WITNESS: One office phone for everyone.</p> <p>6 BY MR. ANDREWS:</p> <p>7 Q. And do you know whether any other</p> <p>8 employees of 881 made any telephone calls on behalf</p> <p>9 of 881 during the time period of November 2nd through</p> <p>10 November 6th?</p> <p>11 A. No, I don't.</p> <p>12 MR. ANDREWS: I don't have any further</p> <p>13 questions.</p> <p>14 MR. TORRES: Nothing further.</p> <p>15 HEARING OFFICER NEWMAN: Then the witness is</p> <p>16 excused.</p> <p>17 MR. TORRES: Union may be done, actually. I</p> <p>18 just need another minute with my cocounsel.</p> <p>19 HEARING OFFICER NEWMAN: Okay. Let's go off the</p> <p>20 record.</p> <p>21 (WHEREUPON, WE WERE OFF THE</p> <p>22 RECORD.)</p> <p>23 HEARING OFFICER NEWMAN: Back on the record.</p> <p>24 Union, do you have any more witnesses?</p> <p>25 MR. TORRES: No, we don't.</p>	<p style="text-align: right;">Page 267</p> <p>1 MR. TORRES: No.</p> <p>2 MR. ANDREWS: Nothing further.</p> <p>3 HEARING OFFICER NEWMAN: Okay. With that, then</p> <p>4 the hearing is closed.</p> <p>5 (WHEREUPON, WE WERE OFF THE</p> <p>6 RECORD AT 3:16 P.M.)</p> <p>7 * * * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

31 (Pages 264 to 267)

1 CERTIFICATION

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3 This is to certify that the attached
4 proceedings before the National Labor Relations Board
5 (NLRB), Region 13 in the matter of RAYMUNDO'S FOOD
6 GROUP, CASE NO. 13-RC-244834, at Chicago, Illinois,
7 on DECEMBER 2, 2019, was held according to the
8 record, and that this is the original, complete, and
9 true and accurate transcript that has been compared
10 to the recording from the hearing, that the exhibits
11 are complete and no exhibits received in evidence or
12 in the rejected exhibit files are missing.
13
14
15

16 TRUDY G. GORDON, C.S.R.
17 CERTIFICATE NO. 084-004077
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A				
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BOARD EXHIBITS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 13-RC-244834

RAYMUNDO'S FOOD GROUP LLC
Employer

And

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881
Petitioner

Place: Chicago, IL
Date: 12/02/19

OFFICIAL REPORTERS

Veritext National Court Reporters
Mid-Atlantic Region
1250 Eye Street, NW – Suite 350
Washington, DC 20005
888-777-6690

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

Case 13-RC-244834

and

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881**

Petitioner

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

Board Exhibit Nos.:

- 1(a) Objections to Election dated November 13, 2019**
- 1(b) Order Directing Hearing and Notice of Hearing dated November 19, 2019**
- 1(c) Affidavit of Service for 1(b) dated November 19, 2019**
- 1(d) Index and Description of Formal Documents**

EXHIBIT NO.: BD 1(a_d)

CASE NO.: 13-RC-244834

NO. OF PGS: 10

RECEIVED: X

CASE NAME: RAYMUNDO'S

DATE: 12/02/19

REJECTED:

REPORTER: TG

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

and

Case 13-RC-244834

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 881**

Petitioner

**AFFIDAVIT OF SERVICE OF: ORDER DIRECTING HEARING AND NOTICE OF
HEARING ON OBJECTIONS**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **November 19, 2019**, I served the above-entitled document by **regular mail and electronic mail** upon the following persons, addressed to them at the following addresses:

Onesimo Romero, Human Resource Manager
Raymundo's Food Group. LLC
7424 South Lockwood Avenue
Bedford Park, IL 60638

Gregory H. Andrews, Attorney
Jackson Lewis, P.C.
150 North Michigan Avenue, Suite 2500
Chicago, IL 60601

Dana S. Elfvin, Attorney
Jackson Lewis, P.C.
150 North Michigan Avenue, Suite 2500
Chicago, IL 60601

Moises Zavala, Director of Organizing
United Food and Commercial
Workers Local 881
1350 East Touhy Avenue
Rosemont, IL 60018

Joseph C. Torres, Attorney
The Karmel Law Firm
221 North LaSalle Street, Suite 1550
Chicago, IL 60601

Nicholas W. Clark, Attorney
United Food and Commercial Workers
International Union (UFCW)
1775 K Street NW, Basement
Washington, DC 20006

November 19, 2019

Date

Denise Gatsoudis, Designated Agent of
NLRB

Name

Denise Gatsoudis

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

and

Case 13-RC-244834

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 881**

Petitioner

**ORDER DIRECTING HEARING AND
NOTICE OF HEARING ON OBJECTIONS**

Pursuant to a Decision and Direction of Second Election, following a post-election hearing and Hearing Officer's Report, a manual rerun election was conducted on November 6, 2019, to determine whether a unit of employees of Raymundo's Food Group, LLC (Employer) wishes to be represented for the purposes of collective bargaining by United Food and Commercial Workers Local 881 (Petitioner). The voting unit consisted of:

Included: All full-time and regular part-time Packers, Formulators, Operators, Lead Operators, Cooks, Floor Clerks, Quality Control Techs, Sanitation Techs, Maintenance Techs, Forklift Operators, Janitors and Material Handlers employed by the Employer at its facility currently located at 7424 South Lockwood Ave., Bedford Park, IL.

Excluded: All other employees, temporary employees, managers, office clerical employees, professional employees and guards and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 135 eligible voters, 66 cast ballots in favor of the Petitioner and 45 cast ballots against representation. There were three void ballots and three challenged ballots. The challenges were not sufficient in number to affect the results of the election. The Petitioner received a majority of the valid votes cast.

THE OBJECTIONS

On November 13, 2019, the Employer timely filed objections to conduct affecting the results of the election. A copy of the objections is attached. The Employer concurrently filed its offer of proof. I have considered the Employer's objections and its offer of proof.

CONCLUSION AND ORDER

I have concluded that the evidence submitted by the Petitioner in support of its objections raise substantial and material facts that could be grounds for overturning the election if introduced at a hearing. In accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations,

IT IS ORDERED, that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

NOTICE OF HEARING

Starting at 9:00 a.m. on December 2, 2019, in a hearing room at the offices of Region 13, National Labor Relations Board, 219 South Dearborn Street, Suite 808, Chicago, Illinois 60604, the hearing on objections, as described above, will be conducted before a Hearing Officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated at Chicago, Illinois this 19th day of November 2019.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board – Region 13
219 South Dearborn Street, Suite 808
Chicago, Illinois 60604-2027

**NATIONAL LABOR RELATIONS BOARD
REGION 13**

**LOCAL 881 UNITED FOOD AND
COMMERCIAL WORKERS,**

**Petitioner,
and**

Case No. 13-RC-244834

RAYMUNDO'S FOOD GROUP,

Respondent.)

OBJECTIONS TO ELECTION

NOW COMES Respondent, Raymundo's Food Group ("Raymundos" or "Company") and, pursuant to Rule 102.69(a) of the Rules and Regulations of the National Labor Relations Board, hereby files its Objections to Conduct Affecting the Results of the Representation Election in the above captioned matter which occurred on November 4, 2019. In support of its Objections, Respondent states as follows:

Local 881 United Food and Commerical Workers ("Local 881"), through itself and its agents, unlawfully interfered with the election by:

1. Threatening employees by telling them that they could be physically harmed if they vote for the Company.
2. Threatening employees by telling them they would be arrested by the Police if they supported the Company.
3. A Section 2(11) Supervisor, Claudia Jiminez, Threatening employees telling them that they will lose their jobs if they support the Company.

By this and other conduct, the Petitioner engaged in objectionable conduct during the critical period before the election that unlawfully affected the results of the representation election.

jackson|lewis.

Respectfully submitted,

/S/Gregory H. Andrew
Gregory H. Andrews
Attorney for Raymundos

CERTIFICATE OF SERVICE

I, Gregory H. Andrews, an attorney representing Raymundos, hereby certify that I have served a copy of the Union's Objections to Conduct Affecting the Results of Election in Case 13-RC-244834 on the following by e-file and email this 13th day of November 2019.

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
Dirksen Federal Building
219 S. Dearborn Street, Suite 808
Chicago, IL 60603-2017
Fax: (312) 886-1341
(Offer of proof included)

Joseph Torres
THE KARMEL LAW FIRM
221N. LaSalle Street
Suite 1550
Chicago, Illinois 60601
T: (312) 641-2910
F: (312) 641-0781
joe@karmellawfirm.com

(Offer of Proof Not Included)

EMPLOYER EXHIBITS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 13-RC-244834

RAYMUNDO'S FOOD GROUP LLC
Employer

And

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881
Petitioner

Place: Chicago, IL
Date: 12/02/19

OFFICIAL REPORTERS

Veritext National Court Reporters
Mid-Atlantic Region
1250 Eye Street, NW – Suite 350
Washington, DC 20005
888-777-6690

Gerardo Mota

Subject: FW: S

From: Virginia Rivera <virginia11@icloud.com>

Sent: Tuesday, November 26, 2019 7:48 AM

To: Gerardo Mota <gmota@raymundos.com>

Subject: S

****External Email****

1 ER, P. EX. 1

EXHIBIT NO.: E 1
CASE NO.: 13-RC-244834
NO. OF PGS: 12

RECEIVED: X
CASE NAME: RAYMUNDO'S
DATE: 12/02/19

REJECTED:
REPORTER: TG



+1 (224) 234-4261 >

iMessage
lun, oct. 28 1:56 p. m.

Recordatorio Junta Sindical !
Miércoles Octubre 30
3pm Ford City Area de Comidas 🍽️
Cada día son más los que se
deciden a votar Unión SI ✓
Corran la voz 🗣️

mar, oct. 29 11:37 a. m.

Un trabajo con sindicato es un
mejor trabajo 😊
Y un mejor trabajo significa una
mejor vida 😎
Días pagados por enfermedad y
personales, seguro médico
accesible, aumentos de sueldo ✓
Un sindicato puede cambiar tu vida
para mejor 😊
Tu lo mereces !

mié, oct. 30 5:03 p. m.

Si se pudo y SI se puede !
A votar Unión SI ✓



iMessage





+1 (224) 234-4261 >

mié, oct. 30 5:03 p. m.

Si se pudo y SI se puede !
A votar Unión SI ✓



jue, oct. 31 10:26 a. m.



iMessage



Apple Pay





+1 (224) 234-4261 >

jue, oct. 31 10:26 a. m.



vie, nov. 1 2:08 p. m.

Atención ! !

Raymundo's y su comité anti unión
están desesperados y están
recurriendo a mentiras y
chismes

Recuerda, Raymundo's rompió la ley
y perdió toda credibilidad X
¡No les creas! Tu ya conoces sus
mentiras y chismes.

Tú vas a ganar y poder negociar un



iMessage



Apple Pay





+1 (224) 234-4261 >

vie, nov. 1 2:08 p. m.

Atención ! !

Raymundo's y su comité anti unión
están desesperados y están
recurriendo a mentiras y
chismes 🗣️

Recuerda, Raymundo's rompió la ley
y perdió toda credibilidad ✖️

¡No les creas! Tu ya conoces sus
mentiras y chismes.

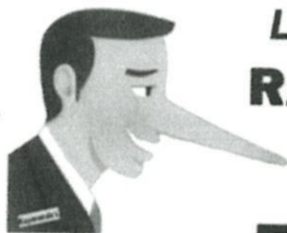
Tú vas a ganar y poder negociar un
contrato Justo ✔️

¡¡La Unión trabaja para ti!!

¡¡Mereces Más!!

¡¡Vota Unión SI!! 🗳️

sáb, nov. 2 12:45 p. m.



La verdad es que
RAYMUNDO'S
INTENTO
ENGAÑARTE

para que votaras con miedo y te



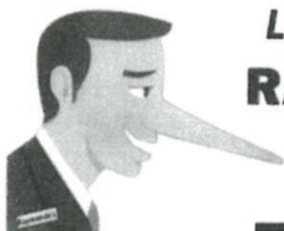
iMessage





+1 (224) 234-4261 >

sáb, nov. 2 12:45 p. m.



La verdad es que
RAYMUNDO'S
INTENTO
ENGAÑARTE

*para que votaras con miedo y te
conformarás con poquito. Ahora que sabes*
LA VERDAD NO CAIGAS
EN LA TRAMPA DE NUEVO.



*Trabajas muy duro.
Mereces mas dinero,
mereces respeto.*

*Vota Union SI y juntos vamos a
negociar un contrato justo.*

*Para mas informacion contacte,
Eduardo Victoria a (224) 234-4261.*



dom, nov. 3 2:53 p. m.



iMessage



Apple Pay





+1 (224) 234-4261 >

dom, nov. 3 2:53 p. m.



Ya no sean mamones con tantas
pendejadas de mensajes

Por eso no greenish en la unión por
mensajes estupidos que tienen que
mandar

Que pretendes conseguir con tus
insultos ?

Disfrutas diciendo groserías?



iMessage





+1 (224) 234-4261 >

Ya no sean mamones con tantas pendejadas de mensajes

Por eso no greenish en la unión por mensajes estupidos que tienen que mandar

Que pretendes conseguir con tus insultos ?

Disfrutas diciendo groserías?

Si crees que vamos a caer un tu juego pues crees mal, sigue intentando.

Enviaremos tus textos a nuestro departamento legal.

Pues dejen de molestar todos los días me tienen que despertar con sus mensajes

Iguales que todos los que me mandan

Ustedes mandan mensajes de ratas de dos patas y muchos más



iMessage





+1 (224) 234-4261 >

Ustedes mandan mensajes de ratas de dos patas y muchos más

Yo trabajo de noche y todo el día me molestan dejen de molestar

1- No recibirás más mensajes ni llamadas (el primer mensaje que te enviamos fue en octubre 20 debiste informarnos de inmediato que no querías recibir los mensajes)

2- No es verdad que todo el día molestamos, eso es una exageración.

3- Respecto al mensaje de rata de dos patas enviado hace varios meses puede gustarte o no, esa es tu opinión y es muy válida y la respetamos.

Dejemos esta conversación hasta aquí y ojalá en un futuro tengamos un mejor entendimiento.

Te deseamos lo mejor 👍

Y los mensajes de ayer y todos los días yo los tengo



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enviamos fue en octubre 20 debiste informarnos de inmediato que no querías recibir los mensajes)

2- No es verdad que todo el día molestamos, eso es una exageración.

3- Respecto al mensaje de rata de dos patas enviado hace varios meses puede gustarte o no, esa es tu opinión y es muy válida y la respetamos.

Dejemos esta conversación hasta aquí y ojalá en un futuro tengamos un mejor entendimiento.

Te deseamos lo mejor 👍

Y los mensajes de ayer y todos los días yo los tengo

Te pido por favor que ya no envíes más mensajes o me veré forzado a denunciarte en la policía

Pues yo también tengo los mensajes

Leído 11/3/19



iMessage



UNION EXHIBITS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 13-RC-244834

RAYMUNDO'S FOOD GROUP LLC
Employer

And

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881
Petitioner

Place: Chicago, IL
Date: 12/02/19

OFFICIAL REPORTERS

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888-777-6690

Account Number: 981041705-00001
Statement Date: Nov 09 2019
Bill Cycle: 224-234-4261
Wireless Number: Eduardo Victoria

Details for 224-234-4261

Date	Time	Number	User Name	Rate	Usage Type	Account Authorization Code	Origin	Destination	Minutes	AirCharge	LDT	Total
18-Oct	10:54 AM	630-254-3090		Peak	M2Mallow		Des Plaine IL	Vm Deposit CL	3		\$0.00	0 \$0.00
18-Oct	11:18 AM	630-254-3100		Peak	M2Mallow		Des Plaine IL	Incoming CL	1		\$0.00	0 \$0.00
18-Oct	11:31 AM	630-254-3100		Peak	M2Mallow		Des Plaine IL	Roselle IL	2		\$0.00	0 \$0.00
18-Oct	12:18 PM	630-254-3100		Peak	M2Mallow		Franklin P IL	Roselle IL	2		\$0.00	0 \$0.00
18-Oct	4:22 PM	630-254-3100		Peak	M2Mallow		Burbank IL	Roselle IL	4		\$0.00	0 \$0.00
18-Oct	4:28 PM	708-358-0654		Peak	Friends & Family		Bedford Pa IL	Oak Park IL	1		\$0.00	0 \$0.00
18-Oct	4:30 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Incoming CL	7		\$0.00	0 \$0.00
18-Oct	4:38 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Incoming CL	3		\$0.00	0 \$0.00
18-Oct	4:47 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Incoming CL	1		\$0.00	0 \$0.00
18-Oct	4:51 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Incoming CL	3		\$0.00	0 \$0.00
18-Oct	5:45 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Incoming CL	5		\$0.00	0 \$0.00
21-Oct	1:57 PM	708-358-0654		Peak	Friends & Family		Melrose Pa IL	Oak Park IL	2		\$0.00	0 \$0.00
21-Oct	2:42 PM	773-269-9376		Peak	PlanAllow		River Grov IL	Chicago IL	12		\$0.00	0 \$0.00
21-Oct	3:09 PM	224-234-3785		Peak	M2Mallow		River Grov IL	Northbrook IL	3		\$0.00	0 \$0.00
21-Oct	3:12 PM	630-254-3100		Peak	M2Mallow		River Grov IL	Incoming CL	7		\$0.00	0 \$0.00
21-Oct	4:10 PM	847-294-5064		Peak	Friends & Family		Countrysid IL	Desplaines IL	3		\$0.00	0 \$0.00
21-Oct	5:34 PM	224-234-3785		Peak	M2Mallow		Countrysid IL	Northbrook IL	28		\$0.00	0 \$0.00
21-Oct	6:01 PM	630-254-3100		Peak	M2Mallow		Countrysid IL	Roselle IL	1		\$0.00	0 \$0.00
21-Oct	6:02 PM	630-254-3100		Peak	M2Mallow		Countrysid IL	Incoming CL	17		\$0.00	0 \$0.00
21-Oct	6:51 PM	630-254-3100		Peak	M2Mallow		Forest Par IL	Roselle IL	9		\$0.00	0 \$0.00
21-Oct	7:05 PM	630-254-3100		Peak	M2Mallow		Forest Par IL	Roselle IL	2		\$0.00	0 \$0.00
21-Oct	8:28 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Roselle IL	3		\$0.00	0 \$0.00
21-Oct	8:35 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Incoming CL	7		\$0.00	0 \$0.00
22-Oct	10:05 AM	630-254-3100		Peak	M2Mallow		Oak Park IL	Incoming CL	4		\$0.00	0 \$0.00
22-Oct	10:15 AM	224-234-3785		Peak	M2Mallow		Elmwood Pa IL	Incoming CL	16		\$0.00	0 \$0.00
22-Oct	1:42 PM	312-410-8941		Peak	PlanAllow		Des Plaine IL	Chicago IL	3		\$0.00	0 \$0.00
22-Oct	1:56 PM	618-559-0952		Peak	M2Mallow		Des Plaine IL	Incoming CL	19		\$0.00	0 \$0.00
22-Oct	2:45 PM	708-374-4195		Peak	M2Mallow		Schiller P IL	Chicago IL	3		\$0.00	0 \$0.00
22-Oct	5:20 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Roselle IL	2		\$0.00	0 \$0.00
22-Oct	5:22 PM	224-234-3785		Peak	M2Mallow		Oak Park IL	Incoming CL	1		\$0.00	0 \$0.00
22-Oct	6:22 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Incoming CL	19		\$0.00	0 \$0.00
22-Oct	6:40 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Roselle IL	6		\$0.00	0 \$0.00
22-Oct	6:59 PM	224-234-3785		Peak	M2Mallow		Oak Park IL	Incoming CL	4		\$0.00	0 \$0.00
22-Oct	7:03 PM	630-254-3100		Peak	M2Mallow		Oak Park IL	Northbrook IL	2		\$0.00	0 \$0.00
22-Oct	7:10 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Vm Deposit CL	1		\$0.00	0 \$0.00
22-Oct	7:10 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Vm Deposit CL	1		\$0.00	0 \$0.00
22-Oct	7:11 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Vm Deposit CL	1		\$0.00	0 \$0.00
22-Oct	7:27 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Roselle IL	15		\$0.00	0 \$0.00
22-Oct	7:45 PM	708-374-4195		Peak	PlanAllow		River Grov IL	Chicago IL	3		\$0.00	0 \$0.00
23-Oct	8:34 AM	224-234-3785		Peak	M2Mallow		Melrose Pa IL	Northbrook IL	27		\$0.00	0 \$0.00
23-Oct	10:03 AM	630-254-3100		Peak	M2Mallow		Des Plaine IL	Roselle IL	1		\$0.00	0 \$0.00
23-Oct	1:01 PM	847-294-5064		Peak	Friends & Family		Des Plaine IL	Desplaines IL	2		\$0.00	0 \$0.00
23-Oct	1:50 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Incoming CL	1		\$0.00	0 \$0.00
23-Oct	2:00 PM	224-234-3785		Peak	M2Mallow		Chicago IL	Northbrook IL	13		\$0.00	0 \$0.00
23-Oct	2:15 PM	630-254-3100		Peak	M2Mallow		Chicago IL	Roselle IL	2		\$0.00	0 \$0.00
23-Oct	4:11 PM	630-254-3100		Peak	M2Mallow		Burbank IL	Roselle IL	8		\$0.00	0 \$0.00
23-Oct	4:44 PM	630-254-3100		Peak	M2Mallow		Burbank IL	Incoming CL	4		\$0.00	0 \$0.00
23-Oct	4:48 PM	847-294-5064		Peak	Friends & Family		Chicago IL	Incoming CL	11		\$0.00	0 \$0.00

U. Exl

EXHIBIT NO.: U 1

CASE NO.: 13-RC-244834

NO. OF PGS: 8

RECEIVED: X

CASE NAME: RAYMUNDO'S

DATE: 12/02/19

REJECTED:

REPORTER: TG

23-Oct	5:30 PM	708-571-8809	PlanAllow	Peak	Oak Park IL	La Grange IL	2	\$0.00	0 \$0.00
23-Oct	6:18 PM	708-358-0654	Friends & Family	Peak	Oak Park IL	Incoming CL	1	\$0.00	0 \$0.00
23-Oct	6:20 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Roselle IL	1	\$0.00	0 \$0.00
24-Oct	9:26 AM	630-254-3100	M2MAllow	Peak	Oak Park IL	Roselle IL	10	\$0.00	0 \$0.00
24-Oct	9:44 AM	630-254-3100	M2MAllow	Peak	Oak Park IL	Roselle IL	3	\$0.00	0 \$0.00
24-Oct	9:50 AM	773-629-7215	PlanAllow	Peak	Oak Park IL	Chicago IL	1	\$0.00	0 \$0.00
24-Oct	9:51 AM	773-629-7215	PlanAllow	Peak	Oak Park IL	Chicago IL	1	\$0.00	0 \$0.00
24-Oct	9:55 AM	630-254-3100	M2MAllow	Peak	Oak Park IL	Incoming CL	1	\$0.00	0 \$0.00
24-Oct	10:48 AM	630-254-3100	M2MAllow	Peak	Chicago IL	Incoming CL	1	\$0.00	0 \$0.00
24-Oct	10:52 AM	630-254-3100	M2MAllow	Peak	Oak Park IL	Roselle IL	2	\$0.00	0 \$0.00
24-Oct	11:20 AM	224-234-3785	M2MAllow	Peak	Oak Park IL	Roselle IL	1	\$0.00	0 \$0.00
24-Oct	11:22 AM	224-234-3785	M2MAllow	Peak	Northlake IL	Incoming CL	1	\$0.00	0 \$0.00
24-Oct	11:54 AM	312-734-9818	M2MAllow	Peak	Northlake IL	Northbrook IL	26	\$0.00	0 \$0.00
24-Oct	11:58 AM	773-668-2715	PlanAllow	Peak	Northlake IL	Northbrook IL	1	\$0.00	0 \$0.00
24-Oct	12:03 PM	773-629-7215	PlanAllow	Peak	Northlake IL	Vm Deposit CL	3	\$0.00	0 \$0.00
24-Oct	12:08 PM	773-441-5450	PlanAllow	Peak	Northlake IL	Chicago IL	1	\$0.00	0 \$0.00
24-Oct	12:14 PM	773-757-7948	PlanAllow	Peak	Northlake IL	Chicgozn03 IL	3	\$0.00	0 \$0.00
24-Oct	12:24 PM	323-535-3272	PlanAllow	Peak	Northlake IL	Chitgozn08 IL	1	\$0.00	0 \$0.00
24-Oct	12:41 PM	708-275-3904	PlanAllow	Peak	Northlake IL	Lsan Da 02 CA	3	\$0.00	0 \$0.00
24-Oct	12:49 PM	773-629-7215	PlanAllow	Peak	Northlake IL	La Grange IL	5	\$0.00	0 \$0.00
24-Oct	1:03 PM	630-254-3100	M2MAllow	Peak	Northlake IL	Incoming CL	12	\$0.00	0 \$0.00
24-Oct	1:21 PM	630-254-3100	M2MAllow	Peak	Elmwood Pa IL	Roselle IL	1	\$0.00	0 \$0.00
24-Oct	2:57 PM	224-234-3785	M2MAllow	Peak	Oak Park IL	Roselle IL	7	\$0.00	0 \$0.00
24-Oct	3:20 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Incoming CL	3	\$0.00	0 \$0.00
24-Oct	4:35 PM	708-674-5974	PlanAllow	Peak	Oak Park IL	Roselle IL	9	\$0.00	0 \$0.00
24-Oct	4:43 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	La Grange IL	9	\$0.00	0 \$0.00
24-Oct	4:43 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Vm Deposit CL	1	\$0.00	0 \$0.00
24-Oct	5:04 PM	773-709-8552	PlanAllow	Peak	Oak Park IL	Roselle IL	12	\$0.00	0 \$0.00
24-Oct	5:28 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Chicgozn03 IL	24	\$0.00	0 \$0.00
24-Oct	5:36 PM	630-935-8123	PlanAllow	Peak	Oak Park IL	Roselle IL	3	\$0.00	0 \$0.00
24-Oct	5:39 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Lombard IL	3	\$0.00	0 \$0.00
24-Oct	5:45 PM	773-476-7927	PlanAllow	Peak	Chicago IL	Roselle IL	5	\$0.00	0 \$0.00
24-Oct	5:46 PM	630-254-3100	M2MAllow	Peak	Oak Park IL	Chicago IL	1	\$0.00	0 \$0.00
24-Oct	6:46 PM	224-234-3785	M2MAllow	Peak	Oak Park IL	Chicago IL	2	\$0.00	0 \$0.00
25-Oct	4:56 AM	630-254-3100	N&W	Off-Peak	Chicago IL	Incoming CL	11	\$0.00	0 \$0.00
25-Oct	4:58 AM	630-254-3100	N&W	Off-Peak	Chicago IL	Roselle IL	1	\$0.00	0 \$0.00
25-Oct	6:38 AM	708-358-0654	Friends & Family	Peak	Chicago IL	Incoming CL	3	\$0.00	0 \$0.00
25-Oct	6:39 AM	630-254-3100	PlanAllow	Peak	Burbank IL	Oak Park IL	1	\$0.00	0 \$0.00
25-Oct	6:43 AM	224-234-3785	M2MAllow	Peak	Burbank IL	La Grange IL	1	\$0.00	0 \$0.00
25-Oct	8:00 AM	224-234-3785	M2MAllow	Peak	Burbank IL	Incoming CL	1	\$0.00	0 \$0.00
25-Oct	8:04 AM	224-234-3785	M2MAllow	Peak	Burbank IL	Northbrook IL	1	\$0.00	0 \$0.00
25-Oct	9:03 AM	847-294-5064	Friends & Family	Peak	Burbank IL	Northbrook IL	39	\$0.00	0 \$0.00
25-Oct	9:06 AM	630-254-3100	M2MAllow	Peak	Oak Park IL	Desplaines IL	2	\$0.00	0 \$0.00
25-Oct	9:09 AM	888-440-6820	PlanAllow	Peak	Chicago IL	Vm Deposit CL	1	\$0.00	0 \$0.00
25-Oct	9:45 AM	630-254-3100	M2MAllow	Peak	Chicago IL	Toll-Free CL	36	\$0.00	0 \$0.00
25-Oct	9:47 AM	224-234-3785	M2MAllow	Peak	Chicago IL	Roselle IL	2	\$0.00	0 \$0.00
25-Oct	9:49 AM	630-254-3100	M2MAllow	Peak	Chicago IL	Northbrook IL	1	\$0.00	0 \$0.00
25-Oct	9:51 AM	630-254-3100	M2MAllow	Peak	Chicago IL	Vm Deposit CL	1	\$0.00	0 \$0.00
25-Oct	9:53 AM	224-234-3785	M2MAllow	Peak	Chicago IL	Vm Deposit CL	1	\$0.00	0 \$0.00
25-Oct	9:57 AM	630-254-3100	M2MAllow	Peak	Chicago IL	Northbrook IL	5	\$0.00	0 \$0.00
25-Oct	12:19 PM	708-374-4195	PlanAllow	Peak	Chicago IL	Roselle IL	3	\$0.00	0 \$0.00
25-Oct	12:23 PM	708-374-4195	PlanAllow	Peak	Oak Park IL	Incoming CL	1	\$0.00	0 \$0.00
25-Oct	12:26 PM	312-734-9818	PlanAllow	Peak	Chicago IL	Chicagohts IL	1	\$0.00	0 \$0.00
25-Oct	12:29 PM	773-668-2715	PlanAllow	Peak	Chicago IL	Vm Deposit CL	1	\$0.00	0 \$0.00
25-Oct	12:35 PM	708-374-4195	PlanAllow	Peak	Oak Park IL	Chicgozn05 IL	6	\$0.00	0 \$0.00
25-Oct					Chicago IL	Chicagohts IL	3	\$0.00	0 \$0.00

25-Oct	12:49 PM	312-596-7230	Peak	PlanAllow	Chicago IL	Chicago IL	2	\$0.00
25-Oct	12:51 PM	312-596-7251	Peak	PlanAllow	Chicago IL	Chicago IL	1	\$0.00
25-Oct	12:52 PM	312-596-7230	Peak	PlanAllow	Chicago IL	Chicago IL	1	\$0.00
25-Oct	12:53 PM	312-596-7230	Peak	PlanAllow	Chicago IL	Chicago IL	3	\$0.00
25-Oct	1:04 PM	708-374-4195	Peak	PlanAllow	Oak Park IL	Chicagohits IL	1	\$0.00
25-Oct	1:31 PM	708-358-0654	Peak	Friends & Family	North River IL	Incoming CL	3	\$0.00
25-Oct	1:38 PM	847-294-5064	Peak	Friends & Family	North River IL	Desplaines IL	1	\$0.00
25-Oct	1:39 PM	224-234-3785	Peak	M2MAllow	North River IL	Northbrook IL	14	\$0.00
25-Oct	2:06 PM	847-294-5064	Peak	Friends & Family	Hillside IL	Desplaines IL	3	\$0.00
25-Oct	2:56 PM	630-254-3100	Peak	M2MAllow	Westcheste IL	Incoming CL	4	\$0.00
25-Oct	3:02 PM	773-533-5000	Peak	PlanAllow	Hillside IL	Chicago IL	3	\$0.00
25-Oct	3:06 PM	630-254-3100	Peak	M2MAllow	Hillside IL	Roselle IL	1	\$0.00
25-Oct	3:07 PM	224-234-3785	Peak	M2MAllow	Hillside IL	Northbrook IL	6	\$0.00
25-Oct	3:13 PM	630-254-3100	Peak	M2MAllowCallWait	Hillside IL	Incoming CL	14	\$0.00
25-Oct	3:26 PM	773-680-7675	Peak	PlanAllowCallWait	Hillside IL	Incoming CL	10	\$0.00
25-Oct	3:35 PM	630-254-3100	Peak	M2MAllow	Hillside IL	Roselle IL	10	\$0.00
26-Oct	11:15 AM	708-374-4195	Off-Peak	N&W	Chicago IL	Chicagohits IL	2	\$0.00
26-Oct	11:45 AM	708-571-8809	Off-Peak	N&W	Chicago IL	Incoming CL	2	\$0.00
26-Oct	11:56 AM	708-571-8809	Off-Peak	N&W	Chicago IL	La Grange IL	2	\$0.00
26-Oct	4:14 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Incoming CL	7	\$0.00
26-Oct	4:31 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Incoming CL	6	\$0.00
26-Oct	5:40 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Roselle IL	1	\$0.00
26-Oct	5:42 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Incoming CL	7	\$0.00
27-Oct	2:15 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Roselle IL	7	\$0.00
28-Oct	12:56 PM	872-203-2358	Peak	PlanAllow	Des Plaine IL	Chicgozn02 IL	2	\$0.00
28-Oct	1:10 PM	708-358-0654	Peak	Friends & Family	River Grov IL	Oak Park IL	1	\$0.00
28-Oct	1:22 PM	630-254-3100	Peak	M2MAllow	River Fore IL	Incoming CL	9	\$0.00
28-Oct	1:33 PM	847-294-5064	Peak	Friends & Family	Oak Park IL	Desplaines IL	2	\$0.00
28-Oct	3:36 PM	773-868-7326	Peak	PlanAllow	River Grov IL	Chicago IL	2	\$0.00
28-Oct	3:38 PM	773-476-7927	Peak	PlanAllow	River Grov IL	Chicago IL	1	\$0.00
28-Oct	3:53 PM	708-369-5870	Peak	PlanAllow	River Grov IL	Vm Deposit CL	1	\$0.00
28-Oct	3:57 PM	708-813-4185	Peak	PlanAllow	River Grov IL	La Grange IL	1	\$0.00
28-Oct	3:58 PM	708-813-4185	Peak	PlanAllow	River Grov IL	La Grange IL	3	\$0.00
28-Oct	4:03 PM	773-698-1485	Peak	PlanAllow	River Grov IL	Chicgozn04 IL	2	\$0.00
28-Oct	4:05 PM	630-254-3100	Peak	M2MAllow	River Grov IL	Roselle IL	4	\$0.00
28-Oct	4:19 PM	224-234-3785	Peak	M2MAllow	River Grov IL	Northbrook IL	1	\$0.00
28-Oct	4:27 PM	773-954-9468	Peak	PlanAllow	River Grov IL	Chicgozn10 IL	3	\$0.00
28-Oct	4:32 PM	773-968-4306	Peak	PlanAllow	River Grov IL	Chicgozn03 IL	3	\$0.00
28-Oct	4:38 PM	630-254-3100	Peak	M2MAllow	River Grov IL	Roselle IL	4	\$0.00
28-Oct	4:49 PM	708-407-6312	Peak	PlanAllow	River Grov IL	Trinleypark IL	5	\$0.00
28-Oct	5:10 PM	773-981-1697	Peak	PlanAllow	River Grov IL	Chicago IL	14	\$0.00
28-Oct	5:26 PM	630-254-3100	Peak	M2MAllow	River Grov IL	Roselle IL	9	\$0.00
28-Oct	7:16 PM	773-868-7326	Peak	PlanAllow	River Grov IL	Chicago IL	1	\$0.00
28-Oct	7:18 PM	630-254-3100	Peak	M2MAllow	River Grov IL	Roselle IL	7	\$0.00
28-Oct	7:24 PM	708-571-8809	Peak	PlanAllow	Forest Par IL	La Grange IL	3	\$0.00
29-Oct	9:09 AM	630-254-3100	Peak	M2MAllow	Oak Park IL	Roselle IL	2	\$0.00
29-Oct	9:13 AM	708-358-0654	Peak	Friends & Family	Chicago IL	Incoming CL	1	\$0.00
29-Oct	9:49 AM	708-310-5942	Peak	PlanAllow	Hillside IL	Vm Deposit CL	3	\$0.00
29-Oct	10:04 AM	630-254-3100	Peak	M2MAllow	Hillside IL	Incoming CL	1	\$0.00
29-Oct	10:08 AM	630-254-3100	Peak	M2MAllow	Hillside IL	Roselle IL	2	\$0.00
29-Oct	11:09 AM	847-294-5064	Peak	Friends & Family	Summit Arg IL	Incoming CL	9	\$0.00
29-Oct	11:21 AM	630-254-3100	Peak	M2MAllow	Summit Arg IL	Incoming CL	4	\$0.00
29-Oct	12:49 PM	773-971-2563	Peak	PlanAllow	Chicago IL	Chicgozn03 IL	2	\$0.00
29-Oct	12:53 PM	773-441-5450	Peak	PlanAllow	Chicago IL	Chicgozn10 IL	3	\$0.00
29-Oct	12:57 PM	773-964-1490	Peak	PlanAllow	Chicago IL	Chicgozn10 IL	1	\$0.00

29-Oct	12:59 PM	773-757-7948	Peak	PlanAllow	Chicago IL	Chicago08 IL	1	\$0.00
29-Oct	1:01 PM	323-535-3272	Peak	PlanAllow	Bedford Pa IL	Lean Da 02 CA	3	\$0.00
29-Oct	1:07 PM	773-499-8142	Peak	PlanAllow	Bedford Pa IL	Chicago IL	4	\$0.00
29-Oct	2:52 PM	708-358-0654	Peak	Friends & Family	Bedford Pa IL	Oak Park IL	4	\$0.00
29-Oct	2:56 PM	630-254-3100	Peak	M2Mallow	Chicago IL	Roselle IL	10	\$0.00
29-Oct	3:22 PM	630-254-3100	Peak	M2Mallow	Berwyn IL	Incoming CL	2	\$0.00
29-Oct	3:25 PM	708-369-5870	Peak	PlanAllow	Berwyn IL	Vm Deposit CL	1	\$0.00
29-Oct	3:43 PM	224-234-3785	Peak	M2Mallow	Berwyn IL	Northbrook IL	9	\$0.00
29-Oct	9:43 PM	630-254-3100	Off-Peak	N&W	Bedford Pa IL	Roselle IL	8	\$0.00
29-Oct	10:46 PM	630-254-3100	Off-Peak	N&W	Bedford Pa IL	Roselle IL	19	\$0.00
30-Oct	8:36 AM	630-254-3100	Peak	M2Mallow	Chicago IL	Roselle IL	1	\$0.00
30-Oct	8:36 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Incoming CL	1	\$0.00
30-Oct	9:55 AM	630-254-3100	Peak	M2Mallow	Chicago IL	Roselle IL	2	\$0.00
30-Oct	9:57 AM	224-234-3785	Peak	M2Mallow	Chicago IL	Incoming CL	2	\$0.00
30-Oct	10:02 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Vm Deposit CL	1	\$0.00
30-Oct	10:04 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Vm Deposit CL	1	\$0.00
30-Oct	10:21 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Incoming CL	2	\$0.00
30-Oct	10:31 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Incoming CL	3	\$0.00
30-Oct	10:40 AM	773-757-7948	Peak	PlanAllow	Oak Park IL	Chicago08 IL	1	\$0.00
30-Oct	10:46 AM	630-254-3100	Peak	M2Mallow	Chicago IL	Roselle IL	2	\$0.00
30-Oct	11:01 AM	847-294-5064	Peak	Friends & Family	Oak Park IL	Incoming CL	1	\$0.00
30-Oct	11:05 AM	847-294-5064	Peak	Friends & Family	Oak Park IL	Incoming CL	25	\$0.00
30-Oct	1:13 PM	224-234-3785	Peak	M2Mallow	Chicago IL	Northbrook IL	38	\$0.00
30-Oct	4:50 PM	708-358-0654	Peak	Friends & Family	Burbank IL	Oak Park IL	2	\$0.00
30-Oct	4:55 PM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Incoming CL	2	\$0.00
30-Oct	4:58 PM	708-369-5870	Peak	PlanAllow	Burbank IL	Vm Deposit CL	1	\$0.00
30-Oct	5:06 PM	773-680-7675	Peak	PlanAllow	Bridgeview IL	Chicago03 IL	6	\$0.00
31-Oct	8:41 AM	630-254-3100	Peak	M2Mallow	Des Plaine IL	Incoming CL	2	\$0.00
31-Oct	10:31 AM	773-629-7215	Peak	PlanAllow	Des Plaine IL	Chicago IL	1	\$0.00
31-Oct	10:31 AM	773-629-7215	Peak	PlanAllow	Des Plaine IL	Chicago IL	13	\$0.00
31-Oct	2:06 PM	630-254-3100	Peak	M2Mallow	Des Plaine IL	Roselle IL	1	\$0.00
31-Oct	2:38 PM	224-234-3785	Peak	M2Mallow	Des Plaine IL	Incoming CL	4	\$0.00
31-Oct	3:26 PM	224-234-3785	Peak	M2Mallow	Des Plaine IL	Northbrook IL	5	\$0.00
31-Oct	3:30 PM	630-254-3100	Peak	M2Mallow	Des Plaine IL	Incoming CL	1	\$0.00
31-Oct	3:32 PM	630-254-3100	Peak	M2Mallow	Des Plaine IL	Incoming CL	1	\$0.00
31-Oct	3:47 PM	630-254-3100	Peak	M2Mallow	Franklin P IL	Roselle IL	2	\$0.00
31-Oct	3:53 PM	773-709-8552	Peak	PlanAllow	Melrose Pa IL	Chicago03 IL	1	\$0.00
31-Oct	3:54 PM	708-674-5974	Peak	PlanAllow	Melrose Pa IL	La Grange IL	6	\$0.00
31-Oct	3:59 PM	630-254-3100	Peak	M2Mallow	Melrose Pa IL	Roselle IL	4	\$0.00
31-Oct	4:09 PM	773-709-8552	Peak	PlanAllow	Melrose Pa IL	Incoming CL	12	\$0.00
31-Oct	4:25 PM	630-254-3100	Peak	M2Mallow	Forest Par IL	Incoming CL	17	\$0.00
31-Oct	4:47 PM	773-709-8552	Peak	PlanAllow	Forest Par IL	Incoming CL	2	\$0.00
31-Oct	5:10 PM	773-844-9910	Peak	PlanAllow	Forest Par IL	Chicago IL	2	\$0.00
31-Oct	5:13 PM	630-254-3100	Peak	M2Mallow	Forest Par IL	Roselle IL	3	\$0.00
31-Oct	5:30 PM	224-234-3785	Peak	M2Mallow	Forest Par IL	Northbrook IL	4	\$0.00
31-Oct	5:34 PM	630-254-3100	Peak	M2Mallow	Chicago IL	Incoming CL	2	\$0.00
31-Oct	5:37 PM	224-234-3785	Peak	M2Mallow	Oak Park IL	Northbrook IL	2	\$0.00
31-Oct	5:39 PM	630-254-3100	Peak	M2Mallow	Oak Park IL	Incoming CL	3	\$0.00
31-Oct	5:42 PM	708-358-0654	Peak	M2Mallow	Oak Park IL	Incoming CL	2	\$0.00
31-Oct	5:47 PM	708-358-0654	Peak	Friends & Family	Chicago IL	Oak Park IL	3	\$0.00
1-Nov	4:48 AM	630-254-3100	Off-Peak	N&W	Oak Park IL	Vm Deposit CL	1	\$0.00
1-Nov	4:52 AM	630-254-3100	Off-Peak	N&W	Chicago IL	Roselle IL	1	\$0.00
1-Nov	5:08 AM	630-254-3100	Off-Peak	N&W	Bedford Pa IL	Roselle IL	1	\$0.00
1-Nov	6:00 AM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Incoming CL	1	\$0.00
1-Nov	6:03 AM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Roselle IL	1	\$0.00

1-Nov	6:04 AM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Incoming CL	1	\$0.00
1-Nov	6:25 AM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Incoming CL	1	\$0.00
1-Nov	6:26 AM	773-844-9910	Peak	PlanAllow	Bedford Pa IL	Chicago IL	1	\$0.00
1-Nov	6:28 AM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Roselle IL	1	\$0.00
1-Nov	8:15 AM	224-234-3785	Peak	M2Mallow	North Rive IL	Incoming CL	24	\$0.00
1-Nov	9:49 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Roselle IL	1	\$0.00
1-Nov	11:23 AM	312-758-8041	Peak	PlanAllow	Oak Park IL	Incoming CL	8	\$0.00
1-Nov	12:57 PM	224-234-3785	Peak	M2Mallow	Chicago IL	Northbrook IL	27	\$0.00
1-Nov	2:51 PM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Roselle IL	8	\$0.00
1-Nov	3:18 PM	224-234-3785	Peak	M2Mallow	Berwyn IL	Incoming CL	1	\$0.00
1-Nov	4:16 PM	773-680-7675	Peak	PlanAllow	Oak Park IL	Incoming CL	2	\$0.00
1-Nov	4:42 PM	630-254-3100	Peak	M2Mallow	Chicago IL	Vm Deposit CL	1	\$0.00
1-Nov	4:43 PM	708-674-5974	Peak	PlanAllow	Chicago IL	La Grange IL	13	\$0.00
1-Nov	4:57 PM	224-234-3785	Peak	M2Mallow	Chicago IL	Northbrook IL	12	\$0.00
2-Nov	2:05 PM	773-610-8489	Off-Peak	N&W	Oak Park IL	Chicago IL	3	\$0.00
2-Nov	4:15 PM	630-254-3100	Off-Peak	N&W	River Grov IL	Roselle IL	14	\$0.00
3-Nov	9:30 AM	630-254-3100	Off-Peak	N&W	Chicago IL	Roselle IL	8	\$0.00
3-Nov	10:11 AM	630-254-3100	Off-Peak	N&W	Oak Park IL	Incoming CL	2	\$0.00
3-Nov	5:03 PM	630-254-3100	Off-Peak	N&W	Oak Park IL	Vm Deposit CL	3	\$0.00
4-Nov	8:45 AM	630-254-3100	Peak	M2Mallow	Elmwood Pa IL	Roselle IL	4	\$0.00
4-Nov	9:03 AM	630-254-3100	Peak	M2Mallow	Schiller P IL	Incoming CL	1	\$0.00
4-Nov	10:47 AM	224-234-3785	Peak	M2Mallow	River Grov IL	Northbrook IL	4	\$0.00
4-Nov	11:15 AM	224-234-3785	Peak	M2Mallow	Forest Par IL	Northbrook IL	12	\$0.00
4-Nov	11:27 AM	630-254-3100	Peak	M2Mallow	Forest Par IL	Incoming CL	5	\$0.00
4-Nov	11:55 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Roselle IL	1	\$0.00
4-Nov	11:56 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Incoming CL	2	\$0.00
4-Nov	12:26 PM	630-254-3100	Peak	M2Mallow	Oak Park IL	Roselle IL	7	\$0.00
4-Nov	12:32 PM	224-234-3785	Peak	M2Mallow	Chicago IL	Northbrook IL	4	\$0.00
4-Nov	12:36 PM	872-203-2358	Peak	PlanAllowCallWait	Cicero IL	Incoming CL	2	\$0.00
4-Nov	12:37 PM	630-254-3100	Peak	M2Mallow	Cicero IL	Roselle IL	5	\$0.00
4-Nov	1:45 PM	630-254-3100	Peak	M2Mallow	Burbank IL	Incoming CL	1	\$0.00
4-Nov	1:54 PM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Roselle IL	2	\$0.00
4-Nov	2:57 PM	630-254-3100	Peak	M2Mallow	Bridgeview IL	Roselle IL	6	\$0.00
4-Nov	3:26 PM	708-674-5974	Peak	PlanAllow	Berwyn IL	La Grange IL	3	\$0.00
4-Nov	3:32 PM	773-680-7675	Peak	PlanAllow	Oak Park IL	Chicgozn03 IL	2	\$0.00
4-Nov	5:33 PM	630-254-3100	Peak	M2Mallow	River Grov IL	Incoming CL	4	\$0.00
4-Nov	6:05 PM	708-374-4195	Peak	PlanAllow	Bellwood IL	Chicagohts IL	2	\$0.00
4-Nov	6:15 PM	708-374-4195	Peak	PlanAllow	Forest Par IL	Chicagohts IL	3	\$0.00
4-Nov	6:18 PM	708-374-4195	Peak	PlanAllow	Forest Par IL	Chicagohts IL	2	\$0.00
4-Nov	6:22 PM	708-374-4195	Peak	PlanAllow	Forest Par IL	Chicagohts IL	1	\$0.00
4-Nov	9:03 PM	708-358-0654	Off-Peak	N&W	Chicago IL	Oak Park IL	2	\$0.00
4-Nov	10:30 PM	708-571-8809	Off-Peak	N&W	Bedford Pa IL	La Grange IL	1	\$0.00
5-Nov	7:45 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Roselle IL	6	\$0.00
5-Nov	8:01 AM	773-629-7215	Peak	PlanAllow	Oak Park IL	Chicago IL	4	\$0.00
5-Nov	8:05 AM	630-254-3100	Peak	M2Mallow	Oak Park IL	Incoming CL	7	\$0.00
5-Nov	8:39 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Incoming CL	9	\$0.00
5-Nov	9:46 AM	224-234-3785	Peak	M2Mallow	Oak Park IL	Northbrook IL	9	\$0.00
5-Nov	10:00 AM	224-234-3785	Peak	M2Mallow	Melrose Pa IL	Incoming CL	12	\$0.00
5-Nov	1:34 PM	618-956-9643	Peak	PlanAllow	Oak Lawn IL	Incoming CL	1	\$0.00
5-Nov	3:27 PM	630-254-3100	Peak	M2Mallow	Burbank IL	Roselle IL	11	\$0.00
5-Nov	3:41 PM	630-254-3100	Peak	M2Mallow	Bedford Pa IL	Incoming CL	3	\$0.00
5-Nov	3:45 PM	224-234-3785	Peak	M2Mallow	Chicago IL	Northbrook IL	2	\$0.00
5-Nov	3:55 PM	773-629-7215	Peak	PlanAllow	Chicago IL	Chicago IL	2	\$0.00
5-Nov	4:06 PM	630-254-3100	Peak	M2Mallow	Cicero IL	Incoming CL	1	\$0.00
5-Nov	6:34 PM	630-254-3100	Peak	M2Mallow	Chicago IL	Roselle IL	2	\$0.00

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

and

Case 13-RC-244834

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 881**

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

On December 2, 2019, I held a formal hearing, at the direction of the Regional Director for Region 13, addressing election objections filed by Raymundo's Food Group, LLC (Employer) alleging that United Food and Commercial Workers Local 881 (Petitioner) engaged in conduct interfering with a Board conducted election. As explained below, I am recommending that the Employer's objections be overruled in full, as the evidence in support of those objections is insufficient to show the Petitioner, or any other persons, engaged in objectionable conduct.

I. Procedural History

On November 6, 2019, a manual rerun election was conducted pursuant to a Decision and Direction of Second Election, following a post-election hearing and Hearing Officer's Report, to determine whether the following unit of employees wishes to be represented for the purposes of collective bargaining by the Petitioner:¹

Included: All full-time and regular part-time Packers, Formulators, Operators, Lead Operators, Cooks, Floor Clerks, Quality Control Techs, Sanitation Techs, Maintenance Techs, Forklift Operators, Janitors and Material Handlers employed by the Employer at its facility currently located at 7424 South Lockwood Ave., Bedford Park, IL.

Excluded: All other employees, temporary employees, managers, office clerical employees, professional employees and guards and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 135 eligible voters, 66 cast ballots in favor of the Petitioner and 45 cast ballots against representation. There were three void ballots and three challenged ballots. The challenges were not sufficient in

¹ All dates are 2019, unless otherwise specified.

number to affect the results of the election. The Petitioner received a majority of the valid votes cast.

On November 13, the Employer filed three timely objections to conduct affecting the results of the election, and on November 19, the Regional Director for Region 13 issued an Order Directing Hearing and Notice of Hearing on Objections. As the hearing officer designated to conduct the hearing on the Employer's objections and to recommend to the Regional Director whether the objections are warranted, I heard testimony and received into evidence relevant documents during the hearing.²

II. The Burden of Proof and the Board's Standard for Setting Aside Elections

It is well settled that "[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, "the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989). To prevail, the objecting party must establish facts raising a "reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert. denied* 396 U.S. 1010 (1970). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at Boca Raton*, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence that unit employees knew of the alleged coercive incident).

In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool Pearson Education, Inc.*, 316 NLRB 716 (1995). Thus, under the Board's test the issue is not whether a party's conduct in fact coerced employees, but whether the party's misconduct reasonably tended to interfere with the employees' free and uncoerced choice in the election. *Baja's Place*, 268 NLRB 868 (1984). See also, *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect, if any, of any misconduct by the non-objecting party to

² The parties were permitted the opportunity to present briefs. Both the Employer and Petitioner filed briefs, which were fully considered.

cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

III. The Employer's Objections and my Recommendations³

After the hearing commenced, the Employer requested to withdraw objection 3. I recommend that the Employer's withdrawal of objection 3 be approved. I will discuss the Employer's two remaining objections below:

Employer Objection 1

Objection 1 alleges that the Petitioner interfered with the election by, "Threatening employees by telling them that they could be physically harmed if they vote for the Company."

Facts

The Employer presented one witness in support of this objection, Maria Zorrilla. On November 4, two days prior to the election, Zorrilla arrived to work sometime around 5:00 or 5:15 a.m. to begin her shift.⁴ After Zorrilla pulled her truck into a parking spot, two unidentified men approached the truck and knocked on Zorrilla's window. Zorrilla waited until the two men backed away from her vehicle before coming out. Once Zorrilla started walking towards the entrance to the building, the men began following behind her and then attempted to give Zorrilla a flyer that she understood to be related to the upcoming election. Zorrilla expressed to the two men that she was not interested in receiving the flyer.⁵

After Zorrilla refused the flyer, one of the men told Zorrilla that she was "stupid" or "ignorant" and they told Zorrilla that she would continue making only \$11 per hour and would "die of hunger." The men continued to follow behind Zorrilla, within approximately 10 to 15 feet, most of the way as Zorrilla walked to the door of the Employer's facility. Once Zorrilla got to the door, she joined a manager named Enedina who was also coming inside the building at that time.⁶ Zorrilla then observed a woman, whom Zorrilla did not know. The woman made an insulting statement of some kind as Zorrilla and manager Enedina walked into the building. Zorrilla testified that the men did not physically harm her or make any gestures or threats to that effect.

³ The order directing hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of the objection related to the witnesses' testimony.

⁴ Zorrilla works first shift from 6 a.m. until 2:30 p.m.

⁵ There is no evidence in the record as to what the flyers actually said, in large measure because Zorrilla refused to accept it from the men who followed her.

⁶ Zorrilla did not know the manager's last name.

Zorrilla assumed the men who interacted with her were connected to the Union because she heard them make reference to “voting;” and Zorrilla testified that she had also observed the men passing out flyers in the parking lot as well.⁷ Eduardo Victoria, an organizer for the Petitioner, testified that he was present passing out flyers on November 4 both at the Employer’s facility and down the street from the facility, but not within the timeframe that Zorrilla arrived at work in the morning.⁸ Victoria was present at or near the Employer’s facility between about 2:30 and 3:00 p.m. and then again at about 9:30 p.m. on November 4. Victoria testified that Jorge Mojica and a woman named Margarita, both of whom are representatives of a faith organization called “Arise,” were also present at the Employer’s parking lot on November 4. Arise is a separate organization that works to provide employees with information about their rights in the workplace.

At approximately 6:00 a.m., Zorrilla attended a daily morning meeting with about 60 other employees. During the meeting, Zorrilla described to “all” of the other employees that were present at the meeting that the men she encountered outside had called her “ignorant” and that the men had told her that she was going to die from hunger.

Analysis and Recommendation

The evidence presented in support of this objection does not substantiate that the Petitioner, or anyone else, engaged in objectionable conduct as alleged. As an initial matter, Zorrilla was not able to clearly substantiate who it was that she interacted with outside on November 4. When Zorrilla was asked the direct question on cross examination of how she knew the two men were affiliated with the Petitioner, Zorrilla’s only response was that she had heard the men state that the paper was related to “voting.” This evidence is insufficient to verify that the two men were in fact affiliated with, or acting on behalf of, the Petitioner, even if considered in conjunction with Zorrilla’s other testimony that she had seen the two men passing out flyers. While the testimony and overall circumstances suggest that the two men might likely have been affiliated directly with the Petitioner, the evidence did not clearly show that. The two men might just as easily have been employees of the Employer engaged in union activity. I cannot rule out this possibility, especially considering that the bargaining unit contains upwards of 135 employees who work on different shifts and considering that there is no evidence in the record demonstrating the extent to which Zorrilla is familiar with those other employees. Considering that representatives of Arise were also present at or near the Employer’s facility on November 4, the two men might also have been affiliated with Arise. I note that there is no evidence in the record to substantiate that the representatives of Arise who were present on November 4 acted at the behest of the Petitioner or that they acted as agents on behalf of the Petitioner.

⁷ Zorrilla was asked on cross examination how she knew that the two men were with the Union or Petitioner. Zorrilla responded, “When they tried to give me the paper, they said it was for the voting, and that’s how I knew they were these men.”

⁸ The parties stipulated that Victoria is an agent of the Petitioner within the meaning of Section 2(13) of the Act.

In the absence of clear evidence that the two men were agents of the Petitioner, it is appropriate to apply the test for third party objectionable conduct.⁹ As articulated in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), a third party's conduct will be found objectionable where the conduct "was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." In evaluating a threat by a third party, the Board considers (1) the nature of the threat itself; (2) whether the threat encompassed the entire bargaining unit; (3) whether reports of the threat were widely disseminated within the unit; (4) whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat; and (5) whether the threat was "rejuvenated" at or near the time of the election. *PPG Industries, Inc.*, 350 NLRB 225, 226 (2007).

Applying factor #1 from *PPG Industries*, the men who spoke to Zorrilla did not actually threaten her verbally or otherwise. The two men did not impede Zorrilla and did not make physical contact with her or threaten to make physical contact with her. Zorrilla clearly described that, although the men tapped on her window, they backed away from her truck before she exited and that the two men then generally stayed about ten to 15 feet away from her as she headed towards the building. These details substantiate that, at most, the two men insulted Zorrilla and predicted that she would "die of hunger" if she continued to make only \$11 per hour.¹⁰ In spite of the hyperbolic and figurative language used, the statements made to Zorrilla do not constitute a threat but instead an expression of opinion that Zorrilla was not at that time earning enough money for her basic needs. Applying factor #2, the statement did not encompass the entire bargaining unit, and in fact was quite specifically addressed to Zorrilla, as the two men said that *Zorrilla* was ignorant and that *Zorrilla* would die of hunger, not that this would be the case for any of the other 134 employees in the bargaining unit.

The statement was widely disseminated. However, Zorrilla provided the employees whom she told with sufficient detail about the conversation to allow them to understand that the statements from the two unidentified men constituted an opinion and not a threat, and that the statements were directed just towards Zorrilla.¹¹ Regarding the fourth factor, there is no evidence that the person who made the statement would have had any power to negatively impact Zorrilla's financial status in any way, or that the statement, directed just towards Zorrilla, would have caused fear in other employees. Additionally, there is nothing about the statement that would reasonably have caused employees to vote a certain way, as would be the case with a threat directly tied to the outcome of the election. Lastly, the timing of the statement was in close proximity to the election, just two days before. While the degree of dissemination of the statement and timing are factors that would otherwise support a finding of objectionable conduct, those factors are mostly irrelevant here, given that the statement was not a threat to begin with, and was in any event not directed to anyone other than Zorrilla. Considering that the statements

⁹ See *Universal Mfg. Corp. of Mississippi*, 156 NLRB 1459, 1466-1467 (1966) (third party standard applied in the absence of clear evidence of the employer's participation in objectionable conduct).

¹⁰ In regard to the two men referring to Zorrilla as "stupid" or "ignorant," the Board does not generally find name calling to be objectionable. *Teamsters Local 299 (Overnite Transportation Co.)*, 328 NLRB 1231, fn. 2 (1999).

¹¹ Zorrilla did not just tell employees that the two men told her that she was going to "die," but that she was going to "die of hunger," a clear statement of campaign rhetoric.

made to Zorrilla were not threatening and would not otherwise have had a tendency to influence the election result, I recommend that this objection be overruled.

Employer Objection 2

Objection 2 alleges that the Petitioner interfered with the election by, “Threatening employees by telling them they would be arrested by the Police if they supported the Company.” The Employer presented two witnesses who testified about separate incidents during which Victoria allegedly threatened employees by references to law enforcement or immigration enforcement.

The text message exchange between Victoria and employee Virginia Rivera

Employer Exhibit 1 contains a record of text messages, first between Victoria and employees in the bargaining unit generally, including Rivera, and then between Victoria and Rivera directly. After Victoria delivered a number of pro-Petitioner campaign messages, Rivera responded, addressing her view or opinion of Victoria’s campaign messages.¹² In the second to last text, Victoria threatened that if Rivera contacted him again, he would notify the police. The text exchange occurred in Spanish. During the course of the hearing, the translator read a translation of the full text exchange into the record, which consists of the following text messages:

Victoria on October 28 at 1:56 p.m.:

Remember the gathering of the Union on Wednesday, October 30th, 3:00 p.m. at Ford City Food Area. Every day there are more people who decide to vote yes for the Union. Spread the word.

Victoria on October 29 at 11:37 a.m.:

To work with a Union is a better job, and to work with -- in a better job means a better life. Sick days paid and personal days paid, medical insurance access, higher salaries. A Union can change your life for the better. You deserve it.

Victoria on October 30 at 5:03 p.m.:

Yes, it was done, and, yes, it can be done. A vote for yes for the Union.

¹² The record does not reveal whether the other employees who were on the original text thread remained after Rivera and Victoria began communicating directly with each other; although I do note that Employer Exhibit 1, a print out of the text exchange, appears to show that Rivera responded to Victoria within the same text conversation. Again, the number of other participants who were included from the start of the exchange is unclear.

Victoria on October 31 at 10:26 a.m.:

This Halloween don't forget that Raymundo's will surprise you with their tricks. You deserve more treats in your bag. Vote yes to the Union.

Victoria on November 1 at 2:08 p.m.:

Attention! Raymundo's and your anti-Union Committee are disappointed and are running around lying and laughing. Remember, Raymundo's broke the law and lost all their credibility. p.m. continuing. Don't believe it. You already know they are lies and jokes. You're going to win and to be able to negotiate a contract -- negotiate a fair contract. The Union works for you. You deserve more. Vote yes for the Union.

Victoria on November 2 at 12:45 p.m.:

The truth is that Raymundo's is trying to trick you so that you vote with fear and you accept very little. Now that you know the truth, don't fall in their new trap. Vote yes for the Union. Work harder. You deserve more money. You deserve respect. Vote yes for the Union and together we are going to negotiate a fair contract. For more information, contact Eduardo Victoria at 224-234-4261.

Victoria on November 3 at 2:53 p.m.:

We can do it. Vote Union yes. Vote Union yes. Yes, you can.

Rivera on November 3 (time not specified):

Don't pull our legs with so many bad messages, or don't be -- don't be such a liar with sending us so many fucking messages.

Victoria on November 3 (time not specified):

What do you think you're going to get with your insults? Do you enjoy saying bad words? If you think that we're going to get into a game with you, you're wrong. You can try -- continue trying. We will send your text messages to our legal department.

Rivera on November 3 (time not specified):

Well, stop bothering me every day with these messages. You wake me up with these messages, similarly, or with all of the messages that you send me. I work at night and all day you are bothering me. Stop bothering me.

Victoria on November 3 (time not specified):

You will not receive any more messages or calls. The first message that we sent you was on October 20th. You should have told us immediately that you didn't want to receive messages. It's not true that we bother you all day. That is an exaggeration. With respect to the two-faced rat message, we have sent various --sent several months ago, it could be that you liked it or not. That's your opinion, and that's valid, and we respect it. Let us have a conversation here, and I hope that in the future we will have a better understanding. We wish the best.

Rivera on November 3 (time not specified):

And yesterday's messages and all the messages from everyday I have.

Victoria on November 3 (time not specified):

I ask that you please don't send anymore messages or you will force me to file a complaint with the police.

Rivera on November 3 (time not specified):

Well, I also have the messages.

Rivera initially testified that she spoke to about ten or 11 other employees about the text messages with Victoria. Rivera's initial testimony was unclear, however, as to whether she was listing off employees that she had spoken to specifically about Victoria's November 3 reference to contacting the police, or whether she was also including other employees who she had complained to generally just about the fact that the Petitioner was sending her too many text messages. I then narrowed the inquiry, asking Rivera to list off only the people she had spoken with specifically about Victoria's November 3 threat to contact the police. Rivera responded that she spoke to about ten people. On cross examination, the Petitioner asked Rivera for the names of those ten people. Rivera provided nine names in response, one of which was Gerardo Mota, the general manager.

Victoria's phone conversation with employee Sara Moran

Moran testified that while she was at church on the Sunday before the November 6 election (three days before the election) she received a call from Victoria.¹³ At the start of her testimony, Moran described the phone call from start to finish. According to Moran's initial testimony, Victoria identifying to Moran that the Union was making calls before the election and asking that the employees vote yes. Then Victoria asked Moran some questions (Moran did not

¹³ The individual who called Moran identified himself as "Eduardo" and identified that he was calling on behalf of the Union. I find this sufficient to thereby conclude that it was Victoria who called Moran.

specify what those questions were). According to Moran's testimony, Victoria then told Moran that the employees should not let the Employer represent them because they are immigrants, and that the employees should let the Union represent them so that the employees do not lose work and so that the Employer does not call immigration on them. Moran testified that Victoria told her not to worry about him because he was a citizen but that the Employer should not be representing immigrants. Moran ended the conversation at that point, telling Victoria that she had to hang up on him so that she could start her [church] service.

Later in her testimony, Moran changed her testimony, claiming that Victoria told her that it was the *Union* that was going to call immigration. I questioned Moran directly to clarify her testimony:

Hearing Officer Newman: *I thought I heard you testify that you heard Eduardo say that the Union was going to call immigration. Was that accurate or not accurate?*

Moran: *That's correct.*

Following up, I questioned Moran directly again:

Hearing Officer Newman: *Did he [Victoria] say who was going to call immigration?*

Moran: *I understood that he was saying that if we voted no for the Union, that they would be the ones that called immigration .*

Moran's later testimony disclosed further ambiguity and confusion as to whether Victoria actually stated that someone (the Petitioner or the Employer) would call immigration, or whether Moran had formed that understanding based simply on Victoria having referenced that the bargaining unit included immigrants.

I questioned Moran further to clarify that point:

Hearing Officer Newman: *Was there anything else that was said that led you to think the Union was making claims about immigration besides the fact that he [Victoria] just referred to the fact -- referred to immigrants, or was it just that that made you feel like that's what was being discussed?*

Moran: *Not that I can remember. Not exactly how you want me to say it, no. Like I'm going to call on you. No.*

I find Moran's testimony unreliable based on the contradictions within and based upon her accompanying demeanor. During her testimony, Moran appeared frustrated and flustered, and it appeared that Moran struggled to remain poised during cross examination and during my

questioning. It appeared that Moran's discomfort with the process of testifying inhibited her ability to maintain consistency, composure, and accuracy about the subjects she testified to.

Analysis and recommendation

As an initial matter, I find that the Employer failed to substantiate that Victoria ever threatened Moran during their phone conversation on November 3. As described above, the evidence from Moran lacked consistency and credibility, rendering the record unclear as to what, if anything, Victoria actually said to Moran about immigration, aside from the fact that Victoria and Moran discussed that there are in fact immigrants employed within the bargaining unit.¹⁴ I will therefore not rely upon this evidence in considering this objection.

This leaves the evidence presented in regard to the text exchange between Victoria and Rivera. I will therefore only apply the *Taylor Wharton Division* factors to Victoria's November 3 text message to Rivera, as follows:

(1) the number of incidents: Victoria's text threatening to contact the police is the only incident of misconduct by the Petitioner as supported by reliable evidence.

(2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit: The reference to law enforcement elevates the severity of the incident and the likelihood to cause fear among voters. However, the severity is mitigated by the context in which the threat was made. Victoria alluded to the police only after Rivera used profanity towards him. It is also clear that Victoria was not threatening that he would contact the police in an attempt to influence how any of the employees voted, or as a consequence of their choice, but that he was threatening specifically to take action against Rivera alone and only if Rivera texted him again.

(3) the number of employees in the voting unit who were subjected to the misconduct: Only one employee in the voting unit was subject to the threat.

(4) the proximity of the misconduct to the date of the election: The threat was made within a few days of the election.

(5) the degree to which the misconduct persists in the minds of employees in the voting unit: There is no direct evidence as to how Victoria's reference to the police persisted in the minds of voters. While any discussion of law enforcement is likely to persist, the statement, again, would

¹⁴ Under direct examination, Moran provided an encapsulated and detailed description of the phone conversation from start to finish, but then deviated from her initial account under cross examination and during my questioning. In the absence of Moran's ability to deliver a consistent, reliable and unchanged account of what she discussed with Victoria, I find that her testimony is unreliable. In particular, I find it inherently unlikely that Victoria would have warned Moran that the Employer might call immigration, but that Victoria then would have threatened that it was the Petitioner who was going to contact immigration, yet this is what Moran testified to. I also find it improbable that Moran could have provided as coherent an initial description as she did during direct examination, but then have suddenly been uncertain during cross examination as to whether it was the Petitioner or Employer who Victoria claimed would contact immigration.

appear to have limited relevance to other voters, given that the statement was couched within a conversation directly with Rivera, the statement related only to Rivera, and the statement was provoked by Rivera using profanity towards Victoria.

(6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit: Rivera disseminated the threat to nine other members of the voting group (after subtracting out Mota, who is a manager).

(7) the effect, if any, of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection: There is no evidence that the Petitioner took any steps to alleviate or rectify the statement.

(8) the closeness of the vote: The Petitioner prevailed by a margin of 21 votes, while only ten voters were aware of the threat.

(9) the degree to which the misconduct can be attributed to the party against whom objections are filed: Victoria is a Section 2(13) agent of the Petitioner and the record is clear that Victoria sent the November 3 text message to Rivera.

On balance, the weight of the *Taylor Wharton Division* factors goes against finding that Victoria's statement constituted objectionable conduct. On its face, the simple fact that Victoria raised a lightning rod issue by referring to law enforcement weighs in favor of finding objectionable conduct, as does the proximity to the election date, and the fact that the statement was clearly made by an agent of the Petitioner. However, those factors are more than outweighed by the fact that the statement only related to one employee, Rivera; that the statement corresponded specifically to a conversation between Victoria and Rivera directly, after Rivera used profanity towards Victoria; and that the statement was isolated and unaccompanied by any other Petitioner misconduct. The relatively large size of the bargaining unit also weighs against finding objectionable conduct, considering again that the threat related only to one single employee out of approximately 135 total employees in the voting group. The extent of dissemination in this circumstance additionally adds some weight against finding the statement objectionable.¹⁵ For the reasons explained above, I find it unlikely that Victoria's statement would have had a tendency to influence any other voter's choice; however, even if Victoria's statement had impacted not only Rivera's vote, but also the votes of every single one of the nine other members of the voting group who knew about the statement, their votes all together could not have changed the outcome of the election, before taking into account the as of yet unresolved challenges. For these reasons, I recommend that this objection be overruled.

¹⁵ See *M.B. Consultants, Ltd.*, 328 NLRB 1089, 1089 (1999) (Board finds that objectionable conduct did not warrant setting election result aside, considering that the margin of votes was greater than number of employees who were aware of misconduct); *Werthan Packaging*, 345 NLRB 343 (2005) (Board declined to overturn election after considering the margin of votes relative to the number of employees who were aware of misconduct).

IV. CONCLUSION

I recommend that the Employer's objections be overruled in their entirety. The Employer has failed to establish that its objections to the election held on November 6, 2019 reasonably tended to interfere with employee free choice. Therefore, I recommend that an appropriate certification issue.

V. APPEAL PROCEDURE

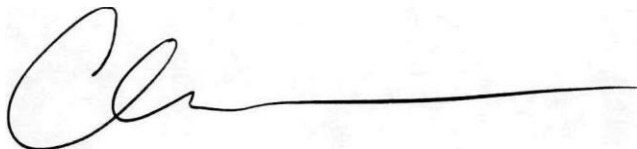
Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 13 by January 2, 2020. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, [Regional address].

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business which is 5:00 p.m. on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: December 18, 2019

A handwritten signature in black ink, appearing to read 'C. Newman', followed by a long horizontal line extending to the right.

Clinton M. Newman
Field Examiner

EXHIBIT E

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

RAYMUNDO'S FOOD GROUP, LLC

Employer

and

Case 13-RC-244834

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 881**

Petitioner

**DECISION AND
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Decision and Direction of Second Election, a manual rerun election was conducted on Wednesday, November 6, 2019¹ in a unit of certain employees of the Employer. The tally of ballots showed that of the approximately 135 eligible voters, 66 cast ballots for Petitioner and 45 cast ballots against representation. There were three challenged ballots. Therefore, Petitioner received a majority of the votes.

The Employer timely filed three objections to the rerun election. Pursuant to my direction, a post-election hearing on the objections was held before a hearing officer on December 2. At the hearing, the Employer withdrew Objection 3. On December 18, the hearing officer issued a report recommending that I overrule Objections 1 and 2 in their entirety and approve the Employer's request to withdraw Objection 3. The Employer filed exceptions to the hearing officer's rulings and recommendations regarding Objections 1 and 2 and a brief in support. The Petitioner filed a brief in opposition to the Employer's exceptions.

I have carefully considered the entire record of these proceedings, including the hearing officer's report and rulings, the exceptions, briefs, and arguments presented by the parties. I find the hearing officer's rulings at the hearing are free from prejudicial error. For the reasons discussed below, I agree with the hearing officer that Objections 1 and 2 should be overruled. I also affirm the recommendation to approve the Employer's request to withdraw Objection 3. Accordingly, I am issuing a Certification of Representative.

THE OBJECTIONS

The Employer's objections considered by the hearing officer assert that the rerun election was tainted because in the week preceding the vote, the Petitioner intimidated and threatened employees.² The Employer filed 42 exceptions to the hearing officer's report recommending that I overrule the objections. In reviewing the hearing officer's report, I have considered each of the Employer's exceptions, any interrelated exceptions, and all supporting arguments. For the

¹ Dates are in 2019 unless otherwise stated.

² At issue are Employer's Objections 1 and 2. As noted above, I agree with the hearing officer's recommendation to approve the Employer's unopposed request to withdraw Objection 3.

reasons discussed below, I find that the exceptions lack merit. To the extent a specific contention, exception, or factual circumstance is not addressed in the below discussion, I have concluded that the hearing officer adequately disposed of that item or issue and that his conclusion requires no comment on my part.

Objection 1 – Threatening employees by telling them that they could be physically harmed if they vote for the Company

In this objection, the Employer claims that two days before the election, the Petitioner or its agents threatened employee Maria Zorrilla. I agree with the hearing officer that the objection should be overruled. The record reflects that in the early morning of November 4, Zorrilla was approached by two men in the Employer's parking lot. Initially, the men knocked on her car window. Zorrilla waited for the men to step away from her vehicle before getting out. After she exited her car, the two men approached her again and one of them attempted to hand her a piece of paper stating it was related to "the voting." When Zorrilla refused the paper, the man threw the paper and the men called her ignorant and/or stupid, stating that she would continue to earn \$11 per hour, and would "die of hunger." The men stayed about 10-15 feet behind Zorrilla while she walked from the parking lot to the facility's entrance.

In its exceptions and brief in support regarding Objection 1, the Employer declares the hearing officer wrongly concluded that the men in the parking lot did not physically or verbally threaten Zorrilla. (Exceptions 3, 14-19) In support, the Employer argues the hearing officer failed to consider certain evidence or misstated circumstances, including the size disparity between the men and Zorrilla, that the men purportedly threw the paper at Zorrilla, and that the men mentioned Zorrilla's death as they followed behind her in the dark. (Exceptions 6, 7, 17) The Employer further contends the hearing officer erred in concluding the men only followed Zorrilla "most of the way" from the parking lot to the facility entrance. (Exception 2) I find the Employer's arguments unconvincing and agree with the hearing officer for the reasons outlined in his report and explained here that the men's conduct did not constitute threatening behavior. First, the record evidence does not clearly establish that the men threw the paper at Zorrilla or that they followed Zorrilla the entire way across the parking lot to the facility entrance. (Tr. 218-220, 223-25) Even assuming *arguendo* that the men did throw the paper in Zorrilla's direction and followed her all the way across the parking lot, this conduct did rise to threatening or coercive behavior based on the overall circumstances. To continue, the context of the reference to Zorrilla's death was in the form of a statement that Zorrilla would "die" and/or "die from hunger" because the Employer did not pay a livable wage. (Tr. 213, 217-18) Thus, the hearing officer correctly concluded that this statement was campaign rhetoric and not a threat of physical harm. Finally, from the perspective of a reasonable employee, the fact that the men were larger than Zorrilla and that it was dark did not transform the overall incident to a physically or verbally threatening encounter.

To continue, the Employer excepts to the hearing officer's application of the third-party objectionable conduct standard to evaluate the incident in question. (Exceptions 4, 10-13) The Employer further contends that even under the third-party standard, the hearing officer erred in finding insufficient evidence of objectionable conduct. (Exceptions 5, 8-9, 14-21) I find no merit to these exceptions. For the reasons outlined in his report, I agree with the hearing officer that the

record fails to establish that the two men who interacted with Zorrilla were the Petitioner's agents. For the reasons outlined in the hearing officer's report and explained above, I also agree that viewed as third-party conduct, the event at issue was not objectionable conduct.

Moreover, since the men's behavior did not amount to threats or coercion, even if Objection 1 is analyzed under the party-conduct standard, as urged by the Employer, I find that the conduct at issue did not have a tendency to interfere with employees' freedom of choice. *Cedars-Sinai Medical Center*, 342 NLRB 596, 597 (2004); *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

For these reasons and those offered by the hearing officer, I adopt the hearing officer's recommendation to overrule Employer's Objection 1.

Objection 2 - Threatening employees by telling them they would be arrested by the Police if they supported the Company

Objection 2 covers two separate incidents involving an agent of the Petitioner, Organizer Eduardo Victoria: (a) a telephone conversation between Victoria and employee Sara Moran and (b) a text message exchange between Victoria and employee Virginia Rivera. The Employer contends that in these conversations, Victoria threatened to call the police and immigration when the employees voiced their disapproval with the Petitioner's organizing/campaigning efforts. I agree with the hearing officer that Objection 2 should be overruled.

A. The telephone conversation between Organizer Victoria and employee Sara Moran

The Employer contends that in a telephone conversation on November 3, Victoria threatened that immigration would be called when Moran spoke out against the Petitioner. The Employer excepts to the hearing officer's conclusion that it failed to substantiate that Victoria ever threatened Moran during the telephone conversation and his decision not to rely on the telephone conversation in considering Objection 2 because Moran's testimony was inconsistent, ambiguous, and not credible. (Exceptions 26, 28-34)

Initially, I note that it is well-established Board policy not to overturn a hearing officer's credibility resolutions unless the clear preponderance of all relevant evidence demonstrates that those findings are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). I have carefully reviewed the record and find no evidentiary basis or support for reversing any credibility resolutions made by the hearing officer. In agreement with the hearing officer, I find that the record evidence only establishes that Victoria said something about immigrants during the telephone conversation. The context of the reference to immigrants is unclear. Thus, although the Employer is correct that the Board has found threats that touch on employees' immigration fears objectionable, there is insufficient evidence that Victoria's statement(s) constituted a threat, expressly or impliedly. See *Labriola Baking Co.*, 361 NLRB 412-14 (2014).

Finally, in its exceptions concerning the November 3 telephone conversation, the Employer also argues that the hearing officer failed to consider confusion or translation inaccuracies due to the use of a Spanish interpreter at the hearing. (Exceptions 25, 27) The

Employer's argument is unpersuasive. My review of the record shows that any possible confusion was cured by the hearing officer during the hearing. Further, despite the Employer's efforts to suggest otherwise, the hearing officer's reference to one inaccurate translation in his report does not warrant finding that the hearing officer otherwise erred in his decision not to rely on the conversation between Victoria and Moran in considering Objection 2.³

For these reasons and those offered by the hearing officer, I adopt the hearing officer's recommendation that Victoria's telephone conversation with Moran did not constitute objectionable conduct.

B. The text messages between Organizer Victoria and employee Rivera

The Employer contends that Victoria, in a text exchange with employee Rivera, stated that he would contact the police so as to threaten her with immigration related consequences. I agree with the hearing officer that the objection should be overruled. As outlined in greater detail in the hearing officer's report, the record evidence shows that from October 28 to November 3, Victoria sent Rivera several pro-Petitioner text messages.⁴ On November 3, the two had a text conversation wherein, following an exchange that included an expletive used by Rivera, Victoria replied, "I ask that you please don't send me anymore messages or you will force me to file a complaint with the police." (Tr. 166-171; Employer Exhibit 1)

The Employer excepts to the hearing officer's recommendation that the weight of the *Taylor Wharton Division* factors goes against finding that Victoria's text messages constituted objectionable conduct. (Exceptions 34-41) The Petitioner's threat to file a complaint with the police was his attempt to end the text conversation due to the displeasure with the tone of the instant text exchange. As further discussed in the report, I find no merit in these exceptions. Accordingly, I affirm the hearing officer's recommendation that Victoria's text messages at issue did not constitute objectionable conduct.

CONCLUSION

Based on the above and having carefully reviewed the entire record, the hearing officer's report and recommendations, the parties' post-hearing briefs, the exceptions and arguments made by the Employer, and the Petitioner's opposition to the exceptions, I overrule the objections and shall certify the Petitioner as the representative of the appropriate bargaining unit.

³ Specifically, the report states the incorrect translation that Moran testified that "Victoria told her not to worry about him because he was a citizen." (Report at 8-9) However, on the record, the interpreter had corrected this translation to be that Moran testified that she said "don't worry about me because I'm a citizen." (Tr. 203)

⁴ The Employer excepts to the hearing officer's finding that Employer's Exhibit 1 contains a record of text messages initially between Victoria and an unknown number of employees in the bargaining unit, including Rivera. (Exception 23) I find the record evidence supports the hearing officer's findings and reasonable inferences on this topic. In any event, whether other employees were included on Victoria's initial text messages is inconsequential.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers Local 881, and that it is the exclusive representative of all the employees in the following bargaining unit:

Included: All full-time and regular part-time Packers, Formulators, Operators, Lead Operators, Cooks, Floor Clerks, Quality Control Techs, Sanitation Techs, Maintenance Techs, Forklift Operators, Janitors and Material Handlers employed by the Employer at its facility currently located at 7424 South Lockwood Ave., Bedford Park, IL.

Excluded: All other employees, temporary employees, managers, office clerical employees, professional employees and guards and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **February 13, 2020**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: January 30, 2020

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board, Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, Illinois 60604-2027

From: ExecSec@nlrb.gov <e-Service@service.nlrb.gov>
Sent: Thursday, February 13, 2020 7:17 PM
To: Elfvin, Dana S. (Chicago)
Subject: RE: 13-RC-244834 - Request for Review of RD's Decision and Order

Confirmation Number: 1023097547

You have successfully accomplished the steps for E-Filing document(s) with the NLRB Office of Executive Secretary. This E-mail notes the official date and time of the receipt of your submission. Please save this E-mail for future reference.

Date Submitted:	Thursday, February 13, 2020 8:15 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name:	Raymundo's Food Group, LLC
Case Number:	13-RC-244834
Filing Party:	Employer
Name:	Dana Elfvin
Email:	dana.elfvin@jacksonlewis.com
Address:	150 North Michigan Avenue, Suite 2500 Chicago IL 60601-7619
Telephone:	(312) 787-4949
Fax:	(312) 787-4995
Attachments:	Request for Review of RD's Decision and Order: Raymundos' Request for Review (2.13.2020).pdf

Your account profile is saved in the **NLRB My Account Portal**. [Click here](#) to view your account information, the cases and inquiries you are a party to and any of your previous E-Filings with the NLRB. You will also be able to E-File additional documents to your cases or inquiries. You will use Account No. **1-2440577175** and the email address you used to file your cases or inquiries to access your account. When you use this link to E-File documents your contact information will be pre-populated on the E-Filing page, so that you do not have to reenter your information.

DO NOT REPLY TO THIS MESSAGE. THIS IS A POST-ONLY NOTIFICATION.
MESSAGES SENT DIRECTLY TO THE EMAIL ADDRESS LISTED ABOVE WILL NOT BE READ.

EXHIBIT F

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 881

Petitioner,

and

RAYMUNDO’S FOOD GROUP, LLC

Respondent.

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) **Case No. 13-RC-244834**
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Pursuant to Sections 102.69(c)(2) and 102.67 of the Rules and Regulations of the National Labor Relations Board (“Board”), Raymundos Food Group, LLC (“Raymundos”) hereby requests that the Board review and overturn the Regional Director’s January 30, 2020 Decision and Certification of Representative (“RD Decision”). Review is appropriate because a substantial question of law or policy is raised due to the absence of, or departures from, officially reported Board precedent. Additionally, the Regional Director’s rulings regarding substantial factual issues are clearly erroneous on the record, and such errors prejudicially affected the rights of Raymundos. As set forth more fully below, the RD Decision should be overturned, including the certification of representative.

This Request for Review concerns a representation petition that was originally filed on July 15, 2019. (Exhibit A) The Petitioner, United Food and Commercial Workers Local 881 (the “Union”), seeks to represent certain employees at Raymundos’ Bedford Park facility. Raymundos manufactures jello, flans, and puddings at this facility, where many employees speak Spanish as

their first language. Pursuant to a stipulated election agreement, an election was conducted by an agent of Region 13 on August 2, 2019. (Exhibit B) Raymundos prevailed, with 53 votes cast against representation and 50 votes in favor of representation. (*Id.*) The Union filed four objections to the conduct of the election, two of which were withdrawn during the hearing ordered by the Regional Director.¹ (Exhibit C) The remaining two objections alleged that employees were told: 1) they would be deported if they supported the Union, and 2) they would lose their jobs if there is a strike. On September 18, 2019, the Hearing Officer issued a report recommending that both of the Union's remaining objections be overruled because, in relevant part, "there is no credible evidence that the Employer threatened employees with deportation." (Exhibit E) Specifically, she found that the statements relied upon by the Union — that the federal government had employees' information, their information would remain registered, and the government would knock on their doors — were "too attenuated from any reference to immigration authorities of employee legal status." *Id.*

Despite the fact that the Union did not file exceptions to the Hearing Officer's September 2019 report, the Regional Director issued a decision *sua sponte* affirming the recommendation to overrule Objection 2, sustaining Objection 1, and setting aside the August 2, 2019 election and directing a second election.² (Exhibit F) Following this decision, an agent of Region 13 conducted the second election on November 6, 2019. Among 135 eligible voters, 66 voted for the Union and 45 voted against the Union.

On November 13, 2019, Raymundos timely filed three objections to the Union's misconduct immediately preceding the election. (Exhibit G) The Regional Director directed a

¹ Transcript of the Hearing on Objections (Volume 1) is attached as Exhibit D, and referred to throughout this Post Hearing Brief as "Tr."

² On October 31, 2019, Raymundos filed a Request for Review of the Regional Director's Decision and Direction of Second Election, which is currently pending before the Board.

hearing to address Raymundos' objections, which was conducted by the Hearing Officer on December 2, 2019.³ (Exhibit H) At the outset of the hearing, Raymundos withdrew its third objection. The two remaining objections established grounds for setting aside the results of the second election:

1. Threatening employees by telling them that they could be physically harmed if they vote for the Company.
2. Threatening employees by telling them they would be arrested by the Police if they supported the Company.

However, on December 18, 2019, the Hearing Officer issued a report overruling these objections based on erroneous findings and application of established Board precedent. (Exhibit J) As such, on January 2, 2020, Raymundos timely filed exceptions to the Hearing Officer's report. On January 30, 2020, the Regional Director issued its decision and certification of representative, failing to take into account established board precedent and to properly rule on factual issues. (Exhibit K)

LAW AND ARGUMENT

When, as here, objections are filed alleging that the "laboratory conditions" of a Board election were violated, the decisional standard—an objective test—is "whether the conduct reasonably tends to interfere with the employees' free and uncoerced choice in the election." *Double J Services*, 347 NLRB No. 58 (2006) (slip op. 1-2), quoting from *Baja's Place, Inc.*, 268 NLRB 868 (1964); *Cedars-Sinai Medical Center*, 342 NLRB 596, 597 (2004); *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995).

The Board considers the following factors in determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear

³ Transcript of the Hearing on Objections (Volume 2) is attached as Exhibit I, and referred to throughout this Post Hearing Brief as "Tr."

among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of conduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and, (9) the degree to which the misconduct can be attributed to the party. *Taylor Wharton Harsco Corporation*, 336 NLRB 157, 158 (2001); *see also, e.g., Avis Rent-A-Car System*, 280 NLRB 580, 581 (1986); *Cedars-Sinai*, *supra* at 597; *Cambridge Tool*, *supra* at 716; and *Phillips Chrysler Plymouth, Inc.*, *supra* at 16. The Board has held that no one factor is dispositive, but rather, it is a balancing test of all the factors. *Taylor Wharton*, 336 NLRB at 158.

A. The Regional Director's Findings and Analysis Regarding the Union's Conduct was Erroneous

The Regional Director's findings and rulings regarding the objectionable nature of the Union's conduct are clearly erroneous based on the weight of the credible evidence and Board precedent. Additionally, the Regional Director's application of *Labriola Baking Co.*, 361 NLRB 412 (2014), here is inconsistent with his prior decision in this matter, which he issued *sua sponte* less than four months ago.

1. The Union Threatened Maria Zorrilla by Using Physical Intimidation

The Union threatened employees who expressed anti-union views by physically intimidating them. The Union acknowledged that it was aware Maria Zorrilla, first shift employee at Raymundos, was "very anti-union." (Tr. 236). Two days before the election, on November 4, 2019, Zorrilla arrived to work while it was still dark out for her 6:00 a.m. shift (Tr. 212-213, 217). Before she could exit her vehicle, two large men startled her by knocking on the window and she

did not want to get out. She repeatedly told the men that she did not want the election-related papers they were handing her (indicating she did not support the Union), so the men then followed her very closely all the way from the parking lot to the door of Raymundos' facility. (Tr. 213-214, 217-219, 223). After telling her she would die from hunger, one of the men threw the paper at her: "he threw the paper, and he just came after me, you know, just right after, right after, and I kept going, kept on going, and they followed me to the door" (Tr. 219).

The undisputed facts are that two men who were significantly larger in stature than Zorrilla brought up her demise in their remarks to her, threw an object, and trailed her closely in the dark – all hallmarks of threatening behavior. The RD Decision improperly focuses on each of the actions of the men in the parking lot in a vacuum, without considering the overall context or their cumulative effect. The Union makes the absurd argument that recognizing its behavior as threatening would result in a rule that large people cannot address small people, also ignoring the importance of context. Whether conduct is threatening invariably depends on the circumstances under which it occurs. Being followed in broad daylight by someone half your size is decidedly different (and less threatening), than being followed in the dark by someone twice your size. As Zorrilla testified, she is very small in stature and the men were large: ". . . and I'm so little. I was more – even more afraid. I was intimidated. I felt threatened." (Tr. 218) Their size difference must be considered in the context that the men brought up her death while following her closely the entire way from her car to the door of the facility in the dark. (Tr. 216).⁴

Contrary to the Union's assertion, threatening employees with starving to death is objectionable conduct under the Act and need not be accompanied by a threat of job loss. For example, in *The Rupp Forge Co.*, a supervisor told employees that "if you guys have a Union in

⁴ Zorrilla testified that the men told her she was going to die. (Tr. 216) She also testified that they told her she would die of hunger. *Id.*

here” then employees “will starve to death.” 201 N.L.R.B 393 (1973). The Board found that this constituted interference with the employees’ free choice in the election and sustained the objection. Similarly, the Union here told Zorrilla that if the Union did not get in she would “die” and/or “die of hunger.” (Tr. 216) Again, this threat must be considered in the context of a woman walking alone in the dark while being followed by large men. This goes beyond campaign rhetoric or mere “regrettable” conduct.

Not only was the Union’s conduct this objectively threatening, Zorrilla was, in fact, threatened. This incident left her “shaking because it was like an assault, an intimidation,” and Zorrilla then lived in fear of arriving at work. (Tr. 214, 218) In fact, she was so shaken that she immediately told her manager and 60 other employees at the morning meeting. (Tr. 215-216) Threats of physical harm or physical intimidation would cause a reasonable employee to be coerced. *See Walter Carpet Mills, Inc.*, 259 NLRB 691 (1981) (setting aside election where objectionable conduct included threatening employees with physical harm).

Finally, the Union’s citation to only the first half of a sentence of Zorrilla’s testimony without providing the remainder is misleading. Zorrilla testified: “[t]hey never threatened to hurt me, but they -- but with what they did, it worked well enough because then I had to live in fear because I was expecting something to happen every time I arrived to work.” (Tr. 218). She refers to the threatening conduct they did carry out (described above), though they did not explicitly state that they were going to hurt her. The standard for objectionable conduct does not require an explicit statement to the effect of “we are going to hurt you.” Nor is there a requirement that any specific gesture be made or physical harm actually be inflicted. *USF Red Star, Inc.*, 330 NLRB 53 (1999) (noting that physical intimidation would “clearly” be an unfair labor practice under Section 8(b)(1)(A)).

i. The RD Decision Erred in Assuming that The Men Who Threatened Zorrilla Were Not Agents of the Union

The RD Decision relied on the Hearing Officer's report, which erroneously assumed that the men who threatened Zorrilla were not Union agents. After finding that "the testimony and overall circumstances suggest that the two men might likely have been affiliated directly with the Petitioner," the Hearing Officer inexplicably went on to state that "the two men might just as easily have been employees of Employer." (Report at p. 4) However, this is purely conjecture, as there was absolutely no evidence presented that the men were Raymundos employees. The Union's witnesses offered no evidence in this regard, nor did they offer any probative evidence with respect to the specific incident with Zorrilla. Neither of the Union's witnesses had personal knowledge of what occurred with respect to handing out flyers on the morning of November 4th. Lorenzo Fernandez testified that he was not present on Raymundos property at all on November 4 and never had interaction with Zorrilla (Tr. 231) Eduardo Victoria was not at Raymundos' facility between 5:00 to 7:00 a.m. on November 4th when Zorrilla was arriving at work. (Tr. 248) However, the Union admitted that its agents were handing out union flyers that day. (Tr. 235) Undisputed evidence that the Union *was* passing flyers on November 4th should outweigh the Hearing Officer's speculation that the men "could have" been Raymundos employees or were not agents of the Union.

The Union further admitted that Arise was present at Raymundos facility on November 4th and that it was coordinating with them. The Union identified that representatives of Arise were in Raymundos' parking lot on November 4th. (Tr. 235)⁵ Victoria and the Union's Director, Moises

⁵ The Hearing Officer mischaracterizes Victoria's testimony as placing Arise "at or near" Raymundos. He testified that he went to the back parking lot area of Raymundos on November 4th, specifically to check in with Jorge Mojica and Margarita from Arise. (Tr. 235: 3-25)

Zavala, knew that in advance that Arise would be in the parking lot that day. (Tr. 236) The evening of November 4th, Victoria and Zavala went from passing flyers at a nearby location (Lockwood and 73) to Raymundos' parking lot specifically to speak with "Jorge Mujica and Margarita" from Arise about what they had been doing. (Tr. 235-236) If Arise was not acting at the direction of the Union, there would be no need for them to make the Union aware of their schedule or to check in with Victoria and Zavala about their activities. Contrary to the Hearing Officer's conclusory statement that "Arise is a separate organization," Victoria described it only as a non-profit organization advocating for workers' rights. At no time did he state that it is "separate" from the Union, and, by all indication, Arise representatives were coordinating with and acting at the direction of the Union. This undisputed evidence should likewise overcome the Hearing Officer's speculation that the men "could have" been Raymundos employees or were not agents of the Union.

ii. The Threatening Conduct Toward Zorrilla Meets the Standard for Objectionable Third Party Conduct

Finally, even if the men were not agents of the Union, their misconduct was sufficiently egregious to meet the standard for objectionable third party conduct to set aside the election. When analyzing third party conduct, the Board considers: 1) the nature of the threat itself; 2) whether the threat encompassed the entire bargaining unit; 3) whether reports of the threat were widely disseminated within the unit; 4) whether the person making the threat was capable of carrying out the threat; and 5) whether the threat was "rejuvenated" at or near the time of the election. *PGI Industries, Inc.* 350 NLRB 225, 226 (2007). The Hearing Officer erred in applying the first factor because the men did verbally threaten Zorrilla and physically intimidate her. To bring up a person starving to death goes beyond "campaign rhetoric" or "regrettable" conduct, particularly considering the overall context of two large men closely following a very small woman walking

alone in the dark.

Physical safety is of paramount importance and a threat of this nature should not be taken lightly. It is not dispositive that this threat did not encompass the entire bargaining unit. Certainly, physical intimidation of one employee is a useful tool to deter others from speaking out or voting against the Union. Here, the threat was widely disseminated to approximately 60 employees just two days before the election, which satisfies factors three and five. With respect to the fourth factor, the Hearing Officer improperly focused solely on the verbal statements made to Zorrilla. However, the accompanying physically threatening behavior was a critical component of the Union's quest to intimidate and coerce employees. There is no doubt that two large men were capable of carrying out physical harm to a small woman walking alone in the dark.

2. The Regional Director Erred in his Application of Board Precedent to the Union's Threats to Contact Authorities

The RD Decision glosses over a clear pattern of behavior, in which Union agent Eduardo Victoria abruptly becomes hostile and threatens to call the police and immigration on employees once they indicate any lack of support for the Union.⁶ Threats to contact immigration authorities in response to employee protected activity are inherently coercive and violate the Act. *See Viracon, Inc.* 256 NLRB 245 (1981) (statements that if the union won, the company would report illegal immigrants to Immigration and the union would not allow individuals without documentation to work in the plant if it got in, were coercive). It is well settled that threats to contact immigration do not have to be direct – they may also be implied. *Labriola Baking Co.*, 361 NLRB 412 (2014) (statements are objectionable conduct where they threaten employees by telling them that their

⁶ It is well established that “a hearing officer may consider an objecting party’s allegations that ‘do not exactly coincide with the precise wording of the objections’ if the new matters are ‘sufficiently related’ to the objections set for hearing.” *Precision Products Group, Inc.*, 319 NLRB 640, 641 n. 3 (1995), citing *Fiber Industries*, 267 NLRB 840 n. 2 (1983). Here, Raymundos objection to the Union’s threat to contact the police encompasses its threat to contact immigration.

union conduct can lead to a heightened scrutiny of their immigration status); *Crown Coach Corp.*, 284 N.L.R.B. 1010 (1987) (statement by union supporter to 11 employees that immigration services would come “unless we got into the Union” was a threat sufficient to create a general atmosphere of fear and confusion that interfered with the election).

i. The Regional Director Failed to Correctly and Consistently Apply Labriola to the Union’s Threat that Immigration Would be Called

First, Raymundos employee Sara Moran was met with threats to call immigration when she spoke out against the Union. The weekend before the election (3-4 days prior), she received multiple calls from someone who identified themselves as a Union representative and who she believed to be Eduardo Victoria. (Tr. 193) Victoria claimed that the Union could obtain benefits for her and “constantly” brought up the issue of immigrants in the context of “if we didn’t vote for [the Union].” (Tr. 200) Moran told Victoria she did not want the Union to represent her and to leave her alone. (Tr. 199-200) In response, Victoria used a “very strong tone” to convey that if she voted “no” for the Union that the employees would “lose work” and immigration would be called. (Tr. 194, 199, 206) Although there was some confusion in the testimony, largely due to the translation issues and selective questioning discussed below, Moran clarified that:

[Victoria] said that because we are immigrants, we should vote for them, because if we didn’t vote for them, we could be deported or we could – immigration could have been called on us.

(Tr. 206). These are precisely the type of unlawful threats prohibited by the Act. *See, e.g., QSI, Inc.*, 346 NLRB 1117 (2006), enf. denied in part on other grounds sub nom. *Smithfield Packing Co. v. NLRB*, 510 F.3d 507 (4th Cir. 2007) (election set aside where employees were threatened that immigration would be called if the Union lost); *Tito Contrs., Inc.*, 2018 NLRB LEXIS 135 (N.L.R.B. March 29, 2018) (threatened retaliation was directly linked to employees’ immigration status; supervisor told the employees that “[i]f the Union wins, then ICE will go into

the office, and they will check the papers”).

The Regional Director committed prejudicial error by finding that the “context of the reference to immigrants is unclear.” In addition to Victoria directly linking the outcome of voting to contacting immigration, Moran testified consistently that she told Victoria that she was not worried because she was a citizen. This response alone shows that Victoria’s statements related to citizenship were expected to cause her to worry about immigration authorities. There is simply no reason why immigration would be brought into the conversation in the first place, other than to intimidate employees in the midst of an election. Since the filing of this representation petition, it is the Union who has injected immigration and deportation into the atmosphere at Raymundos.

The Regional Director improperly relies on *Labriola* to support his ruling, and in the process, contradicts his ruling in this matter from September 2019. In *Labriola*, the Board concluded that continuous reference to “legal workers” was an unlawful threat concerning the employees’ immigration status. 361 NLRB 412 (2014) (“it is both objectionable and [] unlawful for an employer to threaten immigration-related problems for employees because they engage in union or other protected, concerted activity”). Here, Victoria repeatedly invoked employees’ immigration status as a means to convey that there would be immigration related consequences for not supporting the Union. In his September 2019 decision, the Regional Director inexplicably held that a vague reference to the government having employees’ information (in the context of explaining the *Excelsior* list) was sufficient to set aside an election under *Labriola*. A matter of months later, the Regional Director cannot credibly find that a statement, which explicitly references immigration as a consequence of voting no for the Union, is now insufficient to constitute a threat under *Labriola*.

ii. *The RD Decision Failed to Appropriately Consider Translation Inaccuracies*

Finally, the Regional Director failed to account for translation issues and witness confusion when upholding the Hearing Officer's credibility resolutions. As an initial matter, Moran explicitly stated that she "was confusing a little bit the English and the Spanish" because she speaks some English. (Tr. 205-206). There are problems inherent with using an interpreter because "the testimony is filtered through the translation process." *Swingline Co.*, 256 N.L.R.B. 704 (1981) (noting that "the translator probably erred in failing to repeat precisely the witness' answer given in Spanish."); *see also Roney Plaza Mgmt. Corp.*, 1991 NLRB LEXIS 927 (N.L.R.B. Aug. 15, 1992) (rejecting the argument that the witness "changed his story" because it was apparent that in using a Spanish language interpreter, certain questions were not understood by the witness in the same manner which they may have been understood by a lawyer speaking English.) This case was no exception, with counsel for the Union posing questions to the interpreter rather than the witness and inaccurate translation requiring frequent correction and clarification.

It is apparent from the record that certain sentences were not translated accurately. The Regional Director brushed off the concerning fact that the Hearing Officer relied on inaccurately translated testimony in his report. The Hearing Officer's Report repeated the incorrect translation that "Moran testified that Victoria told her not to worry about him because he was a citizen" and did not cite to the correct translation at all. (Report at p. 9) Moran actually testified that *she* told Victoria "don't worry about *me* because *I'm* a citizen." (Tr. 203) (emphasis added). There is a substantial difference between these translations and the probability of other errors cannot be discounted. In another instance, the interpreter incorrectly translated the term "two-legged rat" *three* times before correction. (Tr. 163:6, 170:8, 177:25) Rather than an isolated fluke, these examples of repeated incorrect translations are indicative of a record that is inaccurate and

unreliable. Although the Regional Director claims that any deficiencies in translation were “cured” by the Hearing Officer, he assumes that the Hearing Officer was aware of all of the inaccurate translations. Raymundos should not be prejudiced with adverse credibility findings based on confusing and inaccurate translations.

Only adding to the confusion and likely, Moran’s frustration noted by the Hearing Officer, she was repeatedly asked the same question after having answered several times. The Regional Director failed to consider Moran’s testimony when she first clarified that she understood Victoria’s threat to be “that the Union would call immigration *or* that Raymundo’s would call immigration on us.” (Tr. 202) (emphasis added). Yet the Hearing Officer continued to again attempt to clarify, selectively asking the question of whether it was accurate that Victoria said the Union was going to call immigration. (Tr. 203) She responded, “that’s correct,” which is consistent with her prior testimony that Victoria threatened that either the Union or Raymundos would call immigration. *Id.* Ultimately, it is largely immaterial who would place the call to immigration – Victoria, the Union’s business agent, brought immigration into the conversation and threatened that the call would be made.

iii. The Regional Director Erred in his Analysis of The Union’s Threat to Call the Police on Virginia Rivera

The Regional Director failed to cite a plausible explanation for Victoria’s threat to call the police on Rivera. Incredibly, the Union maintains, and the Regional Director accepted, that threatening to call the police was an appropriate response to a single reply to a string of text messages that Victoria not only initiated, but kept up over the course of a week. It is undisputed that Raymundos employee Virginia Rivera was inundated with pro-union campaign text messages from Local 881 organizer and agent Eduardo Victoria.⁷ (Tr. 152-153; 157-158). When she finally

⁷ The parties stipulated that Victoria is an agent of the Union. (Tr. 152-153). Curiously, the Hearing Officer found that

spoke up against the Union, Victoria threatened to call the police. Victoria's intimidation tactic was successful, as Rivera testified that she was very afraid the police — specifically, the immigration police — were going to come to her house. (Tr. 160).

The Regional Director took the final text exchange between Victoria and Rivera out of context without considering the other communications between them, and pointed to testimony by Victoria that was wholly illogical and unreasonable. Victoria claimed that the reason for his threat was that Rivera "cursed" at him one time and he had asked her to stop sending him messages (Tr. 240). Yet it was Victoria who initiated the text exchange and continued to text Rivera after she asked him to stop. After seven straight days of text messages from Victoria, Rivera responded:

don't pull our legs with so many bad messages [alternate translation: don't be such a liar with sending us so many fucking messages]. Because of that I didn't greenish [sic] in the Union for stupid message that you had to send.

(Tr. 169, Employer's Exhibit 1)⁸ Victoria continued to text Rivera, threatening to send her messages to the Union's legal department. (Tr. 169:15-21) She again spoke up against receiving Union messages and asked to be left alone. (Tr. 169:21-25, 170:1) Victoria still continued to text Rivera. (Tr. 170:2-13). When Rivera finally replied to Victoria's latest text, he stated: "I ask that you do not send anymore messages or you will force me to *file a complaint with the police.*" (Tr. 170:22-24) (emphasis added).

The Union's argument that Victoria was somehow provoked does not reflect the reality of their exchange. It was Victoria who provoked Rivera by initiating and continuing the text exchange

Raymundos' Exhibit 1 contained "a record of text messages, first between Victoria and employees in the bargaining unit generally, including Rivera, and then between Victoria and Rivera directly." (Report at p. 6). However, the record is devoid of any evidence that other bargaining unit employees were initially on this text thread with Victoria and Rivera, and the document plainly shows only one phone number involved in the conversation at the top of the message (if it were sent to a group, multiple phone numbers would appear at the top and if they were removed it would show within the threat that someone had left the conversation). Although the RD Decision states that this is immaterial, it is another example of imprecise findings that are unsupported by the record.

⁸ It appears that "greenish" is a result of autocorrect or failure related to the phone's translation technology. Even with the remaining words it is clear that Rivera did not want to receive the messages and did not support the Union.

after *she* asked *him* to stop, provocation that he then escalated when she expressed lack of support for the Union. The fact that Rivera may have used a single profane word over text does not justify contacting the Union’s legal department or calling the police (notably, profanity is not outside the norm in a manufacturing environment or an organizing campaign). Nor is calling the police a reasonable way to stop a text conversation “due to displeasure with the tone.” While the Regional Director properly acknowledged that Victoria’s statements were in the context of “pro-petitioner text messages,” he ignored the fact that Victoria threatened to call the police only after Rivera made it clear that she would not support the Union and did not want to receive Union messages. To conclude that Victoria’s threat to call the police was justified is nonsensical. Victoria’s statement served no purpose other than to threaten and incite fear in an employee who was concerned about immigration authorities and who had been vocal about not supporting the Union.

iv. The Regional Director Erred in Affording Weight to Eduardo Victoria’s Testimony Regarding his Threats

In addition to being self-serving, Victoria’s testimony was inconsistent and not credible. The Regional Director relies on Victoria’s testimony in ascribing a motive to Victoria’s threat to call the police. However, Victoria blatantly contradicted himself throughout his testimony. Victoria denied having any phone call with Moran. (Tr. 237) Later, in response to entirely leading questions, he purportedly recalled specific things he said or did not say to Moran. (Tr. 241) Although Victoria tried to explain this inconsistency by claiming that he had refreshed his recollection, he admitted he did not do so in the time between the two questions. (Tr. 243) Even when he claimed to remember a conversation with Moran, he said he knew it was her because it was a “09224 on the last number.” (Tr. 247) Yet the parties stipulated that Moran’s number is 708-275-3904. (Tr. 227)

B. The Regional Director Erred in Determining that the Union's Conduct Did Not Reasonably Interfere with Employees' Free Choice

The Regional Director failed to properly analyze the Union's conduct in light of the test set forth in *Taylor Wharton*. There is overwhelming evidence that Union agents engaged in objectionable conduct during the critical period, from physical intimidation to threatening employees with contacting the authorities after they indicated lack of support for the Union. Applying the factors set forth in *Taylor Wharton*, this misconduct incited fear into employees and interfered with their free choice in the election.

1. The Union's Misconduct was Recurring and Severe

Immediately preceding the election, the Union engaged in a pattern of threatening employees who did not support the Union. On at least three separate occasions during the week leading up to the election, the Union intimidated and threatened Raymundos employees. Intimidation by the Union's agents closely following Zorrilla (a small woman walking alone in the dark) and telling her she was going to die is inherently likely to incite fear of physical harm and interfere with employees' free choice. Additionally, the Union or its agents threatened to contact law enforcement, including the police and immigration. Rivera reasonably interpreted Victoria's threat to call the police on her to mean the immigration police. When speaking with Moran, Victoria directly tied her support for the Union to immigration related consequences.

Statements that touch on employees' immigration fears are the most intense, and they invoke the fear "not only of employment loss, but of removal from their very homes as well." *Labriola Baking Co.*, 361 NLRB at 413 (citing *Viracon, Inc.*, 256 NLRB 245, 246-247 (1981)). These statements must not be analyzed by the intentions of the speaker, but by the perspective of a reasonable employee. *Id.* The Board has found even a single threat of this character by a union organizer sufficient to warrant setting aside an election. *See Professional Research, Inc.*,

d/b/a Westside Hospital, 218 NLRB 96 (1975) (noting that the threat does not lose its coercive tendency merely because of an absence of direct evidence showing that some employees are illegal aliens, or that those employees aware of that conduct were not in fact coerced.) Thus, even if the threatening text message to Rivera were the only misconduct, as the Hearing Officer incorrectly found, this is alone is sufficient to set aside the election.

2. The Misconduct Immediately Preceded the Election and Persisted in the Minds of Voters

The Union's misconduct took place well within the critical period before the election, which is sufficient to alter the outcome and warrant setting aside the election. *Student Transportation of America, Inc.*, 32 NLRB 156 (2015) (unlawful conduct occurring one month before an election considered to be within the critical period and sufficiently close to the election date). The election was held on November 6, 2019. Each Raymundos employee testified that the misconduct occurred three to four days prior on November 3rd, 4th, and 5th. It is implausible that these incidents would not be fresh in the minds of employees only a few days later, particularly since the Union made no effort to cancel out their effects.

3. The Misconduct Was Disseminated to a Sufficiently Large Number of Employees

The hearing transcript is replete with facts establishing that agents of the Union threatened at least three Raymundos employees who indicated they did not support the Union. The threats described more fully above were disseminated throughout the largely Hispanic voting unit at Raymundos. Zorrilla, Rivera, and Moran all worked different shifts and thus covered a broad range of employees when disseminating the misconduct. Zorrilla testified that she worked the first shift and told everyone about the threats at the daily morning meeting which is attended by about 60 people. (Tr. 215-216) Rivera testified that she works the third shift and told about 10 people. (Tr.

160-161) Moran testified that she worked second shift and told at least 11 people (Tr. 207).⁹ The number of employees who learned of the threats is far in excess of the difference between the vote tally. The Hearing Officer's conclusion on this issue appears to be based on a faulty calculation. The Union prevailed by a margin of 21 votes (66 for the Union to 45 against the Union), meaning that only 11 votes needed to be swayed to change the outcome (making it 56 against the Union to 55 for the Union). The number of employees aware of the misconduct here was far greater than 11. However, the difference in votes is not dispositive. *See Professional Research, Inc., d/b/a Westside Hospital*, 218 NLRB 96 (1975) (overturning election where five or eight employees were made aware of union organizer's single threat, and the tally was 58 ballots for the Union and 35 against the Union).

4. The Misconduct is Attributable to the Union, Which Did Nothing to Cancel out its Effects

First, the record is devoid of any evidence that the misconduct described above was attributable to Raymundos. Victoria readily admitted that he threatened Rivera with calling the police via text message. (Tr. 240). The Union failed to provide any evidence with respect to who was onsite at Raymundos passing flyers the morning of November 4 when Zorrilla was physically intimidated. Nor did the Union put forth any credible evidence of Victoria's phone call with Moran. Second, the Union did absolutely nothing to cancel out the effects of its misconduct and has not demonstrated any effort in this regard. *See Robert Orr-Sysco Food Serv.*, 338 NLRB 614 (2002) (finding threats of immigration related consequences sufficient to set aside the election, in part because no efforts were made to contradict the threats, lessening their impact).

⁹ Any attempt by the Union to discredit these witnesses for not remembering every single person's first and last name is unfounded. Zorrilla specifically stated that she addressed a group of about 60 employees who attended the morning meeting with her. Rivera and Moran each recalled the names of over half the employees they told, which is impressive considering employees do not wear nametags and Moran has only worked at Raymundos for five months. (Tr. 189, 197)

CONCLUSION

For the reasons stated above, the Regional Director's Decision and Certification of Representative presents a substantial question of law or policy because of the absence of, or departure from, officially reported Board precedent. Furthermore, the Regional Director's rulings regarding substantial factual issues are clearly erroneous on the record, and such errors prejudicially affected the rights of Raymundos. As such, the Raymundos respectfully requests that the Board review and overturn the Decision.

Dated: February 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, I caused the foregoing ***Request for Review*** to be e-filed with the Board, using the NLRB E-File & E-Service System.

I further certify that I caused a copy to be served via e-mail on the Regional Director, Region 13 and on Petitioner through the party of record at the following addresses:

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